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**BREACHES OF  
ANGLO-AMERICAN TREATIES**

*A Study in History and Diplomacy*

BY

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*WITH THREE MAPS*

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## PREFACE

“A declaration by the Representatives of the United States of America in Congress assembled,” commonly known as *THE DECLARATION OF INDEPENDENCE*, proclaimed to the world the first quickening of that sovereign power which was to develop through inorganic association, and loose confederation, into the firm, indissoluble union now constituting the Republic of the United States of America. In that famous document the new infant nation attested its “decent respect to the opinions of mankind” by specifying the several causes which impelled it “to the separation.” From that day to this, through a singular variety of vicissitudes, it has conducted its affairs with a regard for the opinion of other nations at least equal to that shown by its mother country. Yet only a few years ago, incidentally to the public discussion of the Hay-Pauncefote Treaty, the United States was arraigned by the British press as lacking in the sense of honor that holds a nation to its promise. The *Saturday Review* could not expect “to find President Taft acting like a gentleman.” “To imagine,” it said, “that American politicians

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would be bound by any feeling of honor or respect for treaties, if it would pay to violate them, was to delude ourselves. The whole course of history proves this." The London *Morning Post* charged the United States with various infractions of the Treaty and said: "This is surely a record even in American foreign policy; but the whole treatment of this matter serves to remind us that we had a long series of similar incidents in our relations with the United States. Americans might ask themselves if it is really good foreign policy to lower the value of their written word in such a way as to make negotiations with other powers difficult or impossible. The ultimate loss may be greater than the immediate gain. There might come a time when the United States might desire to establish a certain position by treaty, and might find her past conduct a serious difficulty in the way." More recently and presumably with more deliberation, a British author says: "Treaties, in fact, only bind the policy of the United States as long as they are convenient. They are not really worth the labour their negotiation entails or the paper they are written on. It is well that this position should be realised, as it may save a great deal of fuss and disappointment in the future."<sup>1</sup> Other organs of the European press, taking their

<sup>1</sup> *Common Sense in Foreign Policy* by Sir Harry Johnston, p. 89.



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cue apparently from such deliverances as these, expressed themselves to the same effect.

The standing of a nation as to integrity is indeed of the greatest practical importance, not only to itself, but also to other nations. Regard for treaties is essentially a matter of fact, and should therefore be ascertainable from history or from the material of which history is made. The following study is devoted to determining the relative trustworthiness of two great nations as indicated in their conventional intercourse with each other. Beginning with the treaty of peace at the end of our war of independence, it considers all the treaties, conventions, and similar agreements negotiated between Great Britain and the United States that may be regarded as broken by either of the contracting parties, sets forth and discusses the infraction in each case, and ends with a summarising of the records on both sides and a balancing of the accounts.

About two-thirds of the work is taken up with the treaty negotiated in 1850 by our Secretary of State John M. Clayton with the British minister to the United States, Sir Henry Lytton Bulwer. This apportionment of space seems justified by the preeminent importance of the Clayton-Bulwer Treaty, by the complexity and intrinsic interest of the questions to which it gave rise, and by the circumstance that the author has new light to shed

## *Preface*

upon the negotiations and upon the personality of Sir Henry Bulwer, obtained from the Clayton Papers, in the Library of Congress.

This work is not what is called a "war book"; that is, it was not written with a view to forming public opinion on any phase or feature of the present world war. It was begun and, but for some revision and amplification, was finished before this unprecedented contest commenced.

The enactment of a treaty consists of a number of distinct steps or stages: (1) the preparation of a draft, or protocol, (2) the signing, (3) the ratification, and (4) the exchange of ratifications. Being thus completed and sanctioned, the treaty is proclaimed or published. This may be necessary to its going into effect, but ordinarily a treaty becomes effective on the exchange of ratifications. A treaty is said to be concluded when it is signed. It is customary to designate treaties by the date of their signing, but in these pages they are designated by the date of the exchange of their ratifications, when known.

Besides the three maps accompanying the work, an ordinary map of Central America may be found helpful in the perusal of Chapters III, IV and V.

JOHN BIGELOW.

125 E. 57 Street,  
New York,  
January 23, 1917.

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**BREACHES OF  
ANGLO-AMERICAN TREATIES**



# BREACHES OF ANGLO-AMERICAN TREATIES

## I

FIRST TREATY OF PEACE (1783 AND 1784)  
TREATY OF AMITY, COMMERCE AND NAVIGATION  
(JAY TREATY, 1795)

### *Provisional Articles and Definitive Treaty of Peace, 1783 and 1784*

The termination of our Revolutionary War was effected by two successive treaties:

1. Provisional articles concluded in 1782 and proclaimed in 1783.

2. A definitive Treaty of Peace, signed in 1783 and ratified in 1784.

In each of these treaties was an *Article VII* containing the stipulation:

His Britannic Majesty shall with all convenient speed, . . . withdraw all his armies, garrisons, and fleets from the said United States, and from every post, place, and harbor within the same.

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On the 25th of December, 1784, Benjamin Franklin wrote from Passy to the President of Congress :

With respect to the British court, we should, I think, be constantly upon our guard, and impress strongly upon our minds that, though it has made peace with us, it is not in truth reconciled either to us or to its loss of us, but still flatters itself with hopes that some change in the affairs of Europe, or some disunion among ourselves, may afford them an opportunity of recovering their dominion, punishing those who have most offended, and securing our future dependence. . . . In these circumstances we cannot be too careful to preserve the friendships we have acquired abroad, and the union we have established at home, to secure our credit by a punctual discharge of our obligations of every kind, and our reputation by the wisdom of our councils, since we know not how soon we may have a fresh occasion for friends, for credit, and for reputation.

Never did old Ben Franklin give more signal evidence of his sagacity. Nearly ten years later, on the 28th of October, 1795, another treaty was ratified with Great Britain. It contained the following provision (Article II) :

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the Treaty of Peace [1784] to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety six.

The delay in carrying out the original stipula-



## *First Treaty of Peace (1783 and 1784)*

tion, Great Britain sought to justify by charging the United States with violating the following Article contained in both treaties.<sup>1</sup>

Article IV. That creditors on either side shall meet with no lawful impediment to the recovery of the full value in Sterling money of all bona fide debts heretofore contracted.

Article VII allowed Great Britain a "convenient" period in which to withdraw its troops. Article IV allowed the United States no time in which to remove lawful impediments to the recovery of debts. The reason was that these did not have to be removed. They were simply to be disregarded or passed by. The provision was, not that there should be no such lawful impediments, but that creditors should not meet with any. To meet with one it was necessary to bring suit and to have some law admitted in bar of trial.<sup>2</sup> All that was necessary to prevent this was to have the courts recognize the treaty<sup>3</sup> as binding upon them. This if it could be done at all, would have been

<sup>1</sup> Grenville to King, April 19, 1800. *Am. State Papers, For. Rel.*, II, 398. The violation as originally charged embraced the IV, V, and VI Articles of the two treaties (Hammond to Jefferson, Nov. 30, 1791, and Mch. 5, 1792, *Id.*, 189, 197). The last two articles were dropped, it would seem, upon Jefferson's demonstration of their observance (Jefferson to Hammond, May 29, 1792, *Id.*, 202-205).

<sup>2</sup> *Ware vs. Hamilton*, 3 Dallas, 218.

<sup>3</sup> Either of the treaties mentioned. They are alike so far as we consider them.

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accomplished by the proclamation of the treaty. Owing to the feebleness of the central government, it was not so accomplished, and for this reason the Constitution adopted in 1789 provided that treaties then made or which should be made under the authority of the United States, should be the supreme law of the land, binding on the judges in every State, anything in the constitution or laws of any State to the contrary notwithstanding. The words that "creditors shall meet with no lawful impediment in the recovery of all such debts" mean that "when the creditors apply to a court of justice, no law shall be pleaded in bar to a judgment for their debts."<sup>1</sup> Even this constitutional provision, though construed by the Supreme Court of the United States in favor of the creditors, as giving them the right to sue without regard to the validity or invalidity of a state law,<sup>2</sup> did not wholly repair the fault of the Government in making the indiscreet engagement. The Constitution put the treaty above the laws or constitution of a State, but not above the laws or Constitution of the United States. The latter reserved to the several States certain rights. Alleging these reservations as their justification, the States, in several cases, repudiated the treaty as law and thereby put the central government in the position of having broken it.

<sup>1</sup> *Ware vs. Hamilton*, 3 Dallas, 218.

<sup>2</sup> *Id.*, 199.

## *First Treaty of Peace (1783 and 1784)*

When the treaty was made, its observance by the United States depended on the voluntary compliance with it by all the States or such a change in the Constitution of the United States as would empower the central government to compel them to comply with it. There was little or no ground for counting upon either of these alternatives. This circumstance was accepted by Great Britain as a condition of the compact when she ratified it. For its consequences, however injurious to her, she had no legal redress.<sup>1</sup> If she meant to guarantee the execution of Article IV by retaining possession of certain posts, or otherwise, she should have so stipulated in the treaty. As she did not so stipulate, she was obligated to withdraw all her garrisons from the United States "with all convenient speed." The orders for evacuating New York, the largest post she had, were received in that place in April, 1783. The operation was completed by the end of November. The smaller Western posts might have been evacuated in much less time. Allowing a month for the transmission of the necessary orders from New York, in case the orders had to go through there, and a few weeks for their execution, all the posts might have

<sup>1</sup> Referring hereto, Gouverneur Morris said to Pitt (May 21, 1789): "Your natural and proper course was to comply fully on your part, and if then we had refused a compliance, you might rightfully have issued letters of marque and reprisal to such of your subjects as were injured by your refusal." (*Am. State Papers, For. Rel.*, I, 124).

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been evacuated by the end of May, 1783.<sup>1</sup> It was October, 1796, when at Michilimackinac, later Mackinac, the last post to be evacuated, the British Union Jack was hauled down and replaced by the Stars and Stripes.<sup>2</sup> This was thirteen years after the date stipulated in the Treaty of 1783, and at least three months after the one agreed upon in the Treaty of 1795. The date of Great Britain's violation of the treaty may be considered as June, 1783, when Mackinac should have been evacuated and was not.

Great Britain held back to await the execution of the treaty by the United States. This she had no more right to do than the United States had to await its execution by Great Britain. The removal of impediments to the payment of debts was not a condition precedent to the withdrawal of the British troops.

But quite independently of the treaty, Great Britain was loth to loosen her last hold on the territory of her revolted colonies. As Benjamin Franklin had anticipated, she desired to postpone as long as possible the final surrender of a valuable region. She hoped that the new Union would not hold together and that a coveted territory would thus revert to her.<sup>3</sup> There was every

<sup>1</sup> Jefferson to Hammond, May 29, 1792.

<sup>2</sup> *The British Evacuation of the United States* by H. C. Osgood, and *University of Toronto Studies in History*, I, 100.

<sup>3</sup> *University Studies, University of Toronto*, I Series, Vol. 2. See also same, vol. i, 1896, pp. 100, 101.

## *First Treaty of Peace (1783 and 1784)*

prospect, for a time, that the scattered inhabitants residing in the country west and north of the Alleghanies would again seek British political connection. When the boundaries of Upper Canada came to be stated it was thought best to make them as indefinite as possible, so that, without any alteration in their description, the whole of that portion of the Province of Quebec which had been surrendered to the United States by the Treaty of 1783 might again be acquired and incorporated in the Province of Upper Canada.<sup>1</sup>

Great Britain did not content herself with retaining the posts which she held at the date of the treaty. Not only did she fail to return them as she had engaged to do, she aggravated this breach of faith by the lawless acquisition of another one. In April, 1794, three companies of British regulars stole into the territory of the United States, penetrated to the rapids of the Miami in the southern part of what is now the State of Ohio, and built a fort there which was called Fort Miami. This flagrant violation of the sovereignty of the United States was maintained until the general abandonment of the Western posts in 1796.

The withdrawal of his Majesty's forces was to be executed "without causing any destruction or

<sup>1</sup> *University of Toronto Studies in History*, I, 100, 101.

## Chapter I

carrying away any negroes or other property of the American inhabitants" (Art. VII, both treaties). It was a part of the system of warfare adopted by the British when operating in the slave States, to encourage the slaves to desert from their owners, promising them freedom. The conclusion of peace found them with many of these helpless people on their hands. Having to choose between breaking the promise that they had made them and violating their treaty with the United States, they chose the latter and carried away with their troops a considerable number of slaves. They refused to compensate the owners on the ground that slaves were legitimate captures and, as such, the property of the captors, to be disposed of as they saw fit; that in accordance with this principle they had been set free; that, being free, they belonged to no one and consequently it was no breach of treaty to carry them away.<sup>1</sup> The exportation of slaves commenced at New York, as early at least as May, 1783.

What was the earliest case of violation of the treaty on the part of the United States? Under date of March 5, 1792, Mr. Hammond, the British minister at Philadelphia, addressed a long communication to Thomas Jefferson, Secretary of

<sup>1</sup> Benton's *Thirty Years' View*, pp. 89, 90. The number of these slaves is not accurately known. It is given by Benton as 3,000. Jefferson gives the number of negroes carried away as more than 3,000 (Jefferson to Hammond, May 29, 1792).

## *First Treaty of Peace (1783 and 1784)*

State, setting forth alleged infractions of Articles IV, V, VI. Article V, so far as it differed materially from Article IV, was recommendatory. It only required the Congress to recommend to the States certain measures looking to the protection of British subjects in their persons and property. These measures the Congress recommended earnestly and in *bona fide*. That such recommendations were not invariably adopted and carried out was not the fault of the Congress nor was it a violation of the treaty.<sup>1</sup> Charges under Article V may therefore be omitted from consideration. Article VI prohibited the persecution of British subjects by confiscation or confinement, on account of participation in the war.<sup>2</sup> Violations of either Article IV or Article VI could be substantiated only by legal decisions. Mr. Hammond cited but six.<sup>3</sup> The earliest of these was the case

<sup>1</sup> Jefferson to Hammond, May 29, 1792.

<sup>2</sup> *Art. VI.* That there shall be no future confiscations made, nor any prosecutions commenced, against any person or persons for or by reasons of, the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty, or property; and that those who may be in confinement on such charges, at the time of the ratification of the Treaty in America, shall be immediately set at liberty, and the prosecution so commenced be discontinued.

<sup>3</sup> 1. *William Neale's Executors vs. Comfort Sands.* Decided in the Supreme Court of New York [January term, 1785].

2. *Osborne vs. Miffin's Executors.* Decided in the Supreme Court of Pennsylvania [9 Oct., 1786].

3. *Hoare vs. Allen.* Decided in the same court [April term, 1789].

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of a British subject, Waddington, who during the British occupation of New York tenanted a brew-house in that city belonging to an American, Rutgers, who resided without the British lines. Being sued for trespass in an inferior court of New York, Waddington, defended by Alexander Hamilton, pleaded Article VI of the treaty and produced orders from the Commanding-General and from the Quartermaster-General, authorizing his occupation of the premises. The court found him not guilty for the period covered by the order of the Commanding-General, but guilty for the time covered only by that of the Quartermaster-General. From this decision he appealed, but before a final decision was rendered, he agreed with the plaintiff on a compromise involving the payment of a sum of money. The suit was thus disposed of. It is perhaps debatable whether such issue of an incomplete process of law and voluntary compromise was a violation of the treaty; but, admitting that it was, it took place on the 17th of August, 1784, more than a year after the violation

4. *Stewardson, administrator of Mildred vs. Dorsey*. Decided in the General Court of Maryland [after 1 May, 1785].

5. *Rutgers vs. Waddington*. Decided in the Mayor's Court of New York [17 August, 1784].

6. *John Smith Hatfield*, at a court of oyer and terminer at Bergen, New Jersey, August, 1789.

The dates inserted in brackets are obtained from the judicial records of the cases. The item inserted in case 4, is determined from the report of the case (*Md. Rep.*, Harris and McHenry, III, 453).



## *First Treaty of Peace (1783 and 1784)*

of the treaty by Great Britain. Had there been any valid case prior to this one, it is at least probable that Mr. Hammond would have included it in his list with its date.

Jefferson dated the breach of the treaty by Great Britain from April, 1783, when orders were received in New York for the evacuation of that place, and orders should have been received, but, were not, for the evacuation of the Western posts. He dates the breach of it by the United States from the passage of a certain law by the State of Virginia in December, 1783, "nine months after the infractions committed by the other party."<sup>1</sup>

## *Treaty of Amity, Commerce and Navigation (Jay Treaty, 1795)*

In 1795 we ratified a treaty, the first Article of which declared:

There shall be a firm, inviolable and universal peace and a true and sincere friendship, between his Britannic Majesty and his heirs and successors, and the United States of America, and between their respective countries, territories, cities, towns, and people of every degree, without exception of persons or places.

His Majesty violated the "inviolable and universal peace," mocked and converted into hatred the "true and sincere friendship" of these profes-

<sup>1</sup> Jefferson to Hammond, May 29, 1792. *Am. State Papers, For. Rel.*, I, 215.

## Chapter I

sions, by his outrageous treatment of American seamen. This reached its climax when in 1807 a United States warship, the *Chesapeake*, was summoned by the British ship, *Leopard*, to submit to search for British deserters. Taken by surprise, the *Chesapeake* received three full broadsides without being able to reply; and in fifteen minutes was reduced to a helpless condition. The boats of the *Leopard* came over, bringing several British officers, who mustered the ship's company and took from it three sailors.

“Disgraced, degraded, with officers and crew smarting under a humiliation that was never forgotten nor forgiven, the unlucky *Chesapeake* dragged her way back to Norfolk.”<sup>1</sup> But the war of 1812 was only a few years off. The indignity was then to be effaced, so far as that was possible, by a succession of naval victories, which, together with New Orleans and Saratoga and Yorktown, were to give to the United States the distinction of having done more to lower the military and naval prestige of Great Britain than all other nations of the world together.

Article II of the Jay Treaty required that Great Britain withdraw her garrisons from the Western posts by the 1st of June, 1796. On account of opposition to the treaty in Congress, the bill appropriating the funds necessary to the occupation

<sup>1</sup> *Hist. of the United States* by H. Adams, IV, 1920.

## *Jay Treaty (1795)*

of the posts by the United States was not signed by the President until the 6th of May, and there was not time between then and the 1st of June for the Department of War to get officers with troops and supplies to those distant points. On the 10th of May, Captain Lewis of the United States army was sent to Quebec to make arrangements with Lord Dorchester, commanding the British forces in Canada, for the reception of the posts. At the end of May orders were issued to the British commandants to evacuate them; but Lewis, now in Quebec, represented that the American troops were not ready for their reception. Lord Dorchester agreed to await their coming and on the 1st and 2nd of June issued orders for the transfer to take place on the arrival of the American troops.<sup>1</sup> The small posts, Dutchman's Point and Oswegatchie, were abandoned without formal transfer about the 1st of July. The larger posts were delivered to American officers in the following order:

Miami .....	11 July,	1796.
Detroit.....	11 July,	1796.
Niagara.....	11 August,	1796. <sup>1</sup>
Michilimackinac.....	2 October,	1796. <sup>2</sup>

<sup>1</sup> *Michigan Pioneer and Hist. Collection*, XXV, 121; *The Westward Movement* by Justin Winsor, pp. 482, 483.

<sup>2</sup> *The British Evacuation of the United States* by H. C. Osgood.

<sup>3</sup> Letter to the author, Feb. 20, 1914, from the assistant editor of the Michigan Historical Commission.

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If the United States officers had been ready to receive the posts on the 1st of June, the transfer could not have been made then, for the British orders were not issued in the first instance until the end of May and weeks must be allowed for their transmission. To account for this tardiness on the part of the British it is necessary to consider a particular stipulation of the Jay Treaty and another treaty. Article III of the Jay Treaty gave to British subjects as well as to citizens of the United States, the right to trade freely with the Indians on either side of the boundary line between Canada and the United States. A treaty subsequently concluded between the United States and certain tribes of Indians debarred those Indians from trading with persons not provided with a license from the Government of the United States.<sup>1</sup>

Great Britain naturally considered this Indian Treaty as repugnant to Article III of the Jay Treaty. She believed that the United States had ratified the Indian Treaty without knowing the terms of the previously ratified Jay Treaty, as in fact it had,<sup>2</sup> and that it had no intention of violating the latter treaty; at the same time she pro-

<sup>1</sup> Treaty of Greenville, concluded Aug. 3, communicated to Senate, Dec. 9, ratified Dec. 22, 1795. The Jay Treaty was concluded Nov. 19, 1794, ratified by the President, and its ratifications exchanged, Oct. 28, 1795.

<sup>2</sup> *Hist. of the United States*, Hildreth, I, 598, 599.

## *Jay Treaty (1795)*

posed the negotiation of an additional article declaring that no stipulation entered into subsequently to the Jay Treaty should be understood as derogating in any manner from the rights of free intercourse and commerce secured by Article III of that treaty.<sup>1</sup> This article was concluded on the 4th of May, 1796.<sup>2</sup> Information of the fact could not have reached Quebec before the latter part of May, and, until it did, orders for the evacuation were not to issue.<sup>3</sup> Taking these circumstances into account, it appears that the original tardiness of Great Britain in providing for the surrender of the posts was another case of her holding them as security for the observance of the treaty by the United States; another attempt to enforce the treaty by violating it herself. The remissness of the United States in not being prepared to receive the posts by the 1st of June was not contrary to any stipulation. The treaty did not call for a transfer; it provided only for a withdrawal. Grateful acknowledgment is due therefore to the British officers for favoring the United States, as they generally did by executing

<sup>1</sup> Bond, British Minister, to Pickering, Secretary of State, Mch. 26, 1796.

<sup>2</sup> Its ratification was advised by the Senate on the 9th of the same month. Whether afterwards ratified or not does not appear in the official publication of treaties, etc., compiled by M. C. Mallory.

<sup>3</sup> *Hist. of the United States*, Hildreth I, 598; *British Evacuation of the United States*, Osgood.

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it as a transfer. The only one of the larger posts that was found to be evacuated when the Americans entered it, was Detroit. The American force that occupied it was so poorly supplied that to maintain itself till succored, it had to borrow provisions from the British force beyond the river.<sup>1</sup>

The forementioned Indian Treaty cannot be regarded as a violation of the Jay Treaty unless its contravention of it was intentional and was carried into effect. The British Government, through its minister, admitted that it was unintentional, and there being no evidence that it was carried into effect, it may be safely asserted that it was not. It was, moreover, formally repudiated by the United States in the manner proposed by the British Government.

To dispose of the long standing claims of debts which should have been settled under Article IV of the Treaty of 1783, Article VI of the Jay Treaty provided for the arbitration of claims of "British merchants and others" against "citizens or inhabitants of the United States" for *bona fide* debts "contracted before the peace." For the losses and damages resulting from the nonpayment of such debts the United States Government was to make full and complete compensation. To determine the amount of such losses and damages,

<sup>1</sup> *The Westward Movement* by Justin Winsor, p. 483.

## *Jay Treaty (1795)*

five commissioners were to be appointed as follows: two by the King of Great Britain, two by the President of the United States, by and with the advice and consent of the Senate, and one "by the unanimous voice of the other four." The commissioners were accordingly appointed as follows:

### *By the United States*

Thomas Fitzsimmons of Pennsylvania  
James Innes of Virginia<sup>1</sup>

### *By Great Britain*

Thomas Macdonald  
Henry Pye Rich

### *By the Commission*

John Guillemard

Three of the commissioners were to constitute a quorum with "power to do any act appertaining to the said commission, provided that one of the commissioners named on each side and the fifth commissioner shall be present."

The commission met on the 29th of May, 1797. Its discussions developed the fact that the fifth member and one of the British members were completely under the influence of the other British member, Mr. Macdonald, of a domineering temper and uncompromisingly British or anti-American. By his control of the majority he be-

<sup>1</sup> Died; succeeded by Samuel Sitgreaves.

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came practically the commission, and established for his government a system of rules which, in the opinion of the Government of the United States, clearly comprehended a vast mass of cases never submitted to its consideration.<sup>1</sup> Was this a violation of the treaty? Was the commission competent to determine its own jurisdiction under the treaty? No other body or person was formally empowered to do this and the treaty itself declared that the award of the commission should "in all cases, be final and conclusive, both as to the justice of the claim and [as] to the amount of the sum to be paid." It would seem therefore, that the commission had at least as much right as the Government of the United States to decide what cases came within its jurisdiction and that its exercise of such right in the manner stated, however disagreeable and even unfair to the United States, was not a violation of the treaty. But together with the offensive demeanor of Mr. Macdonald, it proved too exasperating for the United States commissioners. These consequently withdrew from the board, on the 31st of July, 1798. This action, if not dictated by the United States Government, was unqualifiedly approved by it. Great Britain called in vain upon the United States to replace the seceding members by the appointment of new ones, offering to re-

<sup>1</sup> John Marshall, Secretary of State, to Grenville, Aug. 23, 1800.



## *Jay Treaty (1795)*

place its own.<sup>1</sup> The United States refused to do so, insisting upon one of two measures:

1. Negotiation of an additional article, defining, to the satisfaction of the United States, the classes of cases to be arbitrated; or,

2. Agreement upon a lump sum as full compensation for all the claims of the creditors.<sup>2</sup>

It thus repudiated its obligation to arbitrate. Its excuse, at the best, was that the arbitration was proving unjust. It had no right to expect justice. A tribunal of arbitration is not a court of justice. Its function is to settle differences by arbitrary judgment, which, even if unjust, is preferable to discord, contention, or war. The withdrawal of the United States must be adjudged a violation of the treaty. Great Britain, after some demurring, consented to compromise on a lump sum, and the two governments agreed upon £600,000, or \$2,664,000, which was duly paid by the United States, under the provisions of a separate convention ratified in 1802.

<sup>1</sup> Grenville to King, April 19, 1800, *Am. State Papers, For. Rel.*, II, 398.

<sup>2</sup> Marshall, Secretary of State, to Grenville, Aug. 23, 1800.

## II

SECOND TREATY OF PEACE (TREATY OF GHENT, 1815)  
CONVENTION FOR INDEMNITY UNDER THE AWARD OF  
THE EMPEROR OF RUSSIA (1823)  
RUSH-BAGOT AGREEMENT (1818)  
CONVENTION RESPECTING FISHERIES (1819)

### *The Treaty of Ghent, 1815*

Article I of this treaty, which closed the War of 1812, commenced as follows:

There shall be a firm and universal peace between his Britannic Majesty and the United States, and between their respective countries, territories, cities, towns, and people of every degree, without exception of places or persons.

This was followed before our Civil War by offenses against the Monroe Doctrine, and during the war by violations of professed neutrality, which may be regarded as challenges to war, if not as acts of war, and certainly as violations of the foregoing stipulation.

## *Second Treaty of Peace (Treaty of Ghent, 1815)*

The Treaty of Ghent found the British in possession of Fort Mackinac (Michilimackinac), which they had captured during the War of 1812, but, as provided also in the first article, the place was returned to the United States in 1815.<sup>1</sup> The British garrison withdrew to the mouth of the St. Mary's River and established itself on Drummond Island, which was believed, at least by the British commander, to be British territory. But at this time the boundary between Canada and the United States was still undefined, as left in the Treaty of 1783. The Treaty of Ghent provided for its definition by a commission of two members, one to be appointed by his Britannic Majesty and one by the President of the United States, by and with the advice and consent of the Senate. The commission was duly appointed, and decided, among other questions, that Drummond Island was not British but United States territory. This took place at Utica, New York, on the 18th of June, 1822. The decision was known to the commander at Drummond Island before the end of the year, but the post was not finally surrendered

<sup>1</sup> . . . All territory, places, and possessions whatsoever, taken by either party from the other during the war or which may be taken after the signing of this treaty, . . . shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property originally captured in the said forts or places and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property (*Art. I, Treaty of Ghent*).

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to the United States until the 14th of November, 1828. The intervening delay of six years and five months is a story of leisurely, formal procedure on the part of Great Britain to decide upon a substitute for Drummond Island as a stronghold of British influence among the Indians of the Northwest. By such procrastination she violated the stipulation in Article I of the treaty, that all territory, places, and possessions, taken by either party from the other during the war, or which might be taken after the signing of the treaty, should be "restored without delay."<sup>1</sup>

By Article I of the treaty it was stipulated that the British troops, in withdrawing from the United States, should not carry away any slaves or other private property whatever or any artillery or other public property originally captured in, and remaining in, any fort or place which the treaty required to be restored to the United States. Slaves were thus recognized as private property. The prohibition against carrying away private property was general, that against carrying away public property was limited to captures made in "said forts or places." The British contended that the prohibition as to private property was also limited; that slaves not captured in any

<sup>1</sup> *Drummond Island* by S. F. Cook; *The United States and Int. Arbitr.* by J. B. Moore; *Treaties, Conventions, etc.*, by W. M. Malloy.

## *Second Treaty of Peace (Treaty of Ghent, 1815)*

fort or place which had to be restored to the United States, or who were not in such fort or place upon the exchange of ratifications, might be carried away without violating the treaty, and they accordingly carried away more slaves, it would seem, than they did in 1783.<sup>1</sup>

By a convention which was ratified in 1819,<sup>2</sup> it was agreed to refer this question of interpretation "to some friendly sovereign or state to be named for that purpose and . . . to consider the decision of such friendly sovereign or state to be final and conclusive on all the matter referred." The arbiter selected was Emperor Alexander of Russia. He decided "that the United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces; and, as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories." The British minister raised the question whether it applied to slaves who, coming from places which had never

<sup>1</sup> The United States was refunded for them in the sum of \$1,204,960 and the average value of slaves was fixed by an international commission at \$280. This would make the number of them over 4,000. (*Convention of 1826 with Great Britain; Am. Hist. Rev.*, July, 1914, p. 83).

<sup>2</sup> Convention respecting Fisheries, Boundary, and the Restoration of Slaves, Art. V.

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been occupied by British troops, voluntarily joined the British forces. It was argued that these slaves, though taken along, were not being carried away from places or territories "of which the restitution was stipulated by the treaty." The answer was expressed as follows: ". . . ever faithful to the grammatical interpretation of the first article of the Treaty of Ghent, his Imperial Majesty declares a second time that it appears to him, according to this interpretation; that in quitting the places and territories of which the Treaty of Ghent stipulates the restitution to the United States, his Britannic Majesty's forces had no right to carry away from these same places and territories, any slave whatever, by whatever means he may have fallen or come into their power."

The Emperor, besides rendering this decision, offered to use his good offices as mediator in the negotiations which must be undertaken to carry it into effect. His offer was accepted and a convention was concluded under his mediation.<sup>1</sup>

### *Convention for Indemnity Under Award of the Emperor of Russia (1823)*

The ratifications of this compact were exchanged on the 10th of January, 1823. It provided for

<sup>1</sup> Moore's *Digest of Intern. Law*, V, 717.

## *Convention for Indemnity (1823)*

the appointment of two commissioners and two arbitrators; one commissioner and one arbitrator to be appointed by the President of the United States, by and with the advice and consent of the Senate, and one commissioner and one arbitrator to be appointed by his Britannic Majesty. The resulting appointments were the following:

### *Commissioners*

Great Britain.....	George Jackson
United States.....	Langdon Cheves

### *Arbitrators*

Great Britain.....	John McTavish
United States.....	Henry Seawell

The commissioners and arbitrators, acting as a joint board, were to agree upon an average value to be allowed for each slave, for which indemnification might be due; thereupon the commissioners, forming a board by themselves, or commission, were to examine the claims for such indemnification. The Secretary of State of the United States was to furnish the commission a definite list of the slaves and other private property for which the citizens of the United States claimed indemnification; it being understood and agreed that the commission should not take cognizance of, nor receive any claims for, private property not contained in said list, and that his Britannic Majesty should not be required to compensate for any

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claims not in said list. His Britannic Majesty engaged to have produced before the commission, as material towards ascertaining the facts, all the evidence of which his Majesty's government might be in possession, by returns from his Majesty's officers or otherwise, of the number of slaves carried away.

The commission was "required to go into an examination of all the claims submitted, through the above mentioned list, by the owners of slaves or other property or by their lawful attorneys or representatives, and to determine the same, respectively, according to the merits of the several cases." Article V read in part as follows: "In the event of the two commissioners not agreeing in any particular case under examination, or of their disagreement upon any question which may result from the stipulations of this convention, then and in that case, they shall draw by lot the name of one of the two arbitrators, who after having given due consideration to the matter contested, shall consult with the commissioners; and a final decision shall be given, conformably to the opinion of the majority of the two commissioners and of the arbitrator so drawn by lot. . . ."

The joint board met and settled the value of the average slave as \$280.<sup>1</sup> The two commissioners proceeded to consider the several claims, but, in-

<sup>1</sup> *Am. Hist. Rev.*, July, 1914, p. 837.



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stead of agreeing, they developed irreconcilable differences on the following points:

1. As to whether certain cases which had been accidentally omitted from the stipulated list might be added to it. These cases were not after-thoughts. They had accompanied the list, but through the inadvertence or misunderstanding of the person who prepared it, were not entered on it.

2. As to the right of the claimants to interest on the value of their slaves. Mr. Cheves held that reasonable damages for the withholdment of a right were necessary to compensate the sufferer and that such damages were measured in the present case by interest at the legal rate. Mr. Jackson contended that the value of the slaves was the compensation to be made. This sum being fixed, the only duty of the commissioners was to examine persons or receive depositions, as to the number of them.

3. As to the right of the United States claimants to examine documents introduced as evidence by the British commissioner. Mr. Jackson received from his government a mass of papers, consisting of extracts from the log-books of the vessels which had carried slaves away and other documentary evidence. He refused to deliver them to the commission, except on condition that claimants should be denied inspection of them until the testimony in their respective cases should

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be closed. Mr. Cheves maintained that the claimants were clearly entitled to inspect such evidence.

4. As to whether compensation was due for slaves carried away from Dauphin Island, in Mobile Bay. Mr. Jackson denied such obligation on the ground that this territory was not lawfully a part of the United States at the time of its evacuation, that it belonged to West Florida, which was not ceded to the United States until 1819.

It will be seen from these differences that Mr. Jackson, unlike his government in its construction of the Treaty of Ghent, was for a strict, literal interpretation of the Convention of 1823. Agreeing thereto, we may say, with respect to the points of difference, that the first two seem to be debatable, that the last two are clearly against him, and that they are all subject to arbitration under the provisions of Article V. Mr. Cheves wished to refer them to arbitration. Mr. Jackson may have consented to settle the first two points in this way, but he stood out against such settlement as to the last two, on the grounds,

1. That the question of interest did not result from the stipulations of the convention;

2. That Dauphin Island was not lawful territory of the United States before 1819.

“By the refusal of the British commissioner to refer questions to the arbitrators, the provisions of the convention for the settlement of differences

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between the commissioners were rendered wholly nugatory.”<sup>1</sup> The questions thus excluded from arbitration did result from the stipulations of the convention; their exclusion constituted therefore a violation of that instrument.

The title of the United States to Dauphin Island was derived, not from the treaty concluded with Spain in 1819, for the cession of the Floridas, but from the one concluded with France in 1803, for the cession of Louisiana.<sup>2</sup> Great Britain questioned its validity and refused to arbitrate it. The matter, however, was unimportant, for the question turned, not upon title, but upon possession. The provisions of the Treaty of Ghent applied to “all territory, places and possessions, taken by either party from the other during the war.” That Dauphin Island was in the possession of the United States and taken from them by the British does not admit of any question.

Secretary Clay proposed that Great Britain either compromise with the United States on a lump sum, covering all items and all claims, or instruct her commissioners “to execute the fifth article of the Convention according to its true intent and meaning.” A refusal of this proposal meant an appeal to the Emperor of Russia. Impelled probably by distaste for the latter course,

<sup>1</sup> Moore's *Digest of Intern. Law.*

<sup>2</sup> Clay to Vaughn, Oct. 12, 1826.

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she decided on a compromise. This was arranged by another convention ratified in 1826, which fixed the sum allowed at \$1,204,960. It was carried into effect by a commission, created by act of Congress in 1827, twelve years after the original agreement, within a year of the period in the case of the Western posts, "after two treaties had been made, and two arbitrations rendered, to explain the meaning of the first treaty, and which fully explained itself."<sup>1</sup>

The commission completed its labors and finally adjourned on the 31st of August, 1828.

### *Rush-Bagot Agreement (1818)*

With a view of preventing a recurrence of such fighting and destruction of property as took place on the Great Lakes between Canada and the United States during the War of 1812, the United States concluded with Great Britain an agreement known as the Rush-Bagot Agreement. It limited the vessels, on each side, allowed on the lakes to the following:

*On Lake Ontario*—One vessel not exceeding 100 tons burden and armed with one 18-lb. cannon;

*On the Upper Lakes*—Two vessels not exceeding like burden and armament;

*On Lake Champlain*—One vessel not exceeding like burden and armament.

<sup>1</sup> Benton's *Thirty Years' View*, I, 90.

## *Rush-Bagot Agreement (1818)*

All other armed vessels on these lakes were to be forthwith dismantled and no other vessels were to be built or armed on them.

This agreement was effected by an exchange of notes, and was therefore not strictly a treaty. It was, however, approved by the Senate on the 16th, and proclaimed by President Monroe on the 28th of April, 1818. It was observed by both parties until 1838. From 1838, until about 1843, it was violated by Great Britain. At first, this violation seemed to the United States excusable, if not justifiable. Canada had an insurrection on her hands with which an element of our population on the Canadian border showed considerable sympathy, going so far as to coöperate with the insurgents. But, as these troubles subsided, the British preparations made to meet them did not seem to our Government to be proportionately diminished. The United States consequently decided on retaliation. A sidewheel bark, with a registered tonnage of 498 tons and carrying six pieces of cannon (two 52-pounders and four 32-pounders) was built in parts at Pittsburgh, Pennsylvania, taken across country by mule teams and canal boats to Erie, Pennsylvania, and put together and launched there on Lake Erie in 1843. This vessel has been on the lakes ever since. She was first named the *Michigan*, but on the construction of a modern battleship of that name, was re-

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named the *Wolverine*. On the 6th of May, 1912, she was placed out of commission and assigned to duty with the naval militia of Pennsylvania.

Since 1865 it seems to have been admitted that the agreement did not preclude the maintenance of a revenue service.<sup>1</sup> In the winter of 1911-12, the United States had on the lakes, besides revenue cutters, six vessels. Only four were allowed. The smallest of these numbered 542 and the largest 1130 tons displacement. The largest tonnage allowed was 100 tons burden or, say roughly, 140 tons displacement. All mounted more than one gun, the number allowed. One of them, the *Dubuque*, a gunboat, built in 1904, mounted six 4-inch guns. The largest caliber allowed was 3.2 inches (18-pounder). Most of these vessels went into the lakes by way of the St. Lawrence River and the Welland Canal, with the permission of the Canadian Government and without armament, the latter being removed for the voyage and replaced afterwards. But their presence on the lakes cannot be reconciled with the terms of the Rush-Bagot Agreement.

### *Convention Respecting Fisheries (1819)*

In 1819 Great Britain concluded with the United States a treaty allowing the inhabitants of the United States to fish and dry and cure fish, on

<sup>1</sup> Moore's *Digest of Intern. Law*, I, 696.

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certain parts of the coast of Newfoundland and Labrador. When this treaty had been in satisfactory operation about twenty years, it was interpreted so as not to allow of our fishing inside of the bays or indents of the coast measured from headland to headland. An armed naval force was sent to sustain this claim and the United States sent two war steamers to protect the rights of American fishermen. The nations were thus on the verge of war when their difference was settled by a compromise effected by another treaty (1854). But the provisions of the latter were subject to termination after the expiration of ten years, and they expired accordingly on the 17th of March, 1866. New arrangements were made by the Treaty of Washington, 1871, and subsequent agreements, but they gave rise to repeated controversy. The matter was not settled to the satisfaction of both countries until it was submitted to arbitration at The Hague in 1910.

Of the seven distinct questions into which it was resolved, two were decided in part according to the contentions of Great Britain and in part according to those of the United States; the remaining five questions were decided according to the contentions of the United States.<sup>1</sup> The case of the United States thus proved on the whole a con-

<sup>1</sup> J. H. Latané, *Am. Journal of Int. Law*, Jan., 1913, p. 19. The last diplomatic step necessary to the completion and perfection of this award was taken in 1912.

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siderably better one than that of Great Britain. But the award seems to show violation of the treaty by both parties.



### III

#### THE CLAYTON-BULWER TREATY (1850) INTRODUCTION. THE MOSQUITO COAST THE NEGOTIATIONS

The Clayton-Bulwer Treaty was primarily a treaty of alliance between Great Britain and the United States for the protection of a ship canal to be constructed across Central America, as a line of rapid transit between the Atlantic and Pacific oceans. Each of the contracting nations had an interest in such communication, but not the same or an equal one. Great Britain could reach her East Indian dependency, then under the government of the East Indian Company, by the route around Cape Good Hope in less time than she could have done so by a canal through Central America. She did have possessions on the western coast of North America, in China, and in the Pacific Ocean, which would have been brought nearer to her by such a waterway. But at that time and for many years afterwards, she attached little value to Canada, and, for the rest, she was more than willing to trust to her command of the

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seas, irrespectively of any transisthmian communication, for the security of her overseas possessions. In California, the United States had not an overseas but a continental possession, a coast line, making the country a power on the Pacific as it already was on the Atlantic. Its newly discovered gold fields were attracting to it the adventurous, enterprising spirits of the world. The distance between New York and San Francisco by way of the Nicaraguan Canal would have been less than half as long as it was by the usual route around Cape Horn. The canal would have been very much more useful to the United States than to Great Britain. Our ability to maintain the integrity of the national domain and secure the legitimate advantages of our newly acquired possessions, seemed to depend upon water communication across the isthmus. That such should have been the common belief of the people of that generation may seem strange to us in these days of transcontinental railroads and telegraph lines, but we must remember that to the people of that period it was a grave question whether a railroad could be constructed across the Rocky Mountains and the Mississippi River. Many believed that, if it were possible to build it, a railroad could not be successfully operated over "The Great American Desert," lying beyond the Mississippi River.<sup>1</sup>

<sup>1</sup> Travis.

## *The Clayton-Bulwer Treaty (1850)*

On the 25th of October, 1849, Colonel G. W. Hughes, of the United States Topographical Engineers, chief engineer of the Panama Railroad, said in answer to a request from John M. Clayton, Secretary of State, for his views "in reference to the different projects which have been presented to the public for a railroad from the Mississippi to the Pacific, exclusively within the territories of the United States":

I do not believe that such a road can ever become a great commercial thoroughfare, and I much doubt if it would, when completed, for a century to come, more than pay for its expense.

Fourteen years after this the Union Pacific Railroad was begun and six years later it was completed. The money invested in its construction yielded a profit of 50 per cent.<sup>1</sup> During the first year of its operation, its operating expenses, including taxes, consumed but 61.34 per cent. of its gross earnings. The ratio of such expense to its earnings during the first ten years of its operation was on an average 47 per cent.<sup>2</sup>

To understand the different views taken of the Clayton-Bulwer Treaty and the questions of interpretation to which it gave rise, it is necessary to consider the course of events which led up to

<sup>1</sup> *The Union Pacific Railway* by J. P. Davis.

<sup>2</sup> *Hist. of Union Pac. Railway* by H. K. White, p. 116.

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its negotiation. We may begin with the conquest of the Aztecs by Fernando Cortez between 1519 and 1522.<sup>1</sup> The domain of the Montezumas comprised a large part, but not all, of the territory included in the present Republic of Mexico. It did not include Yucatan. This and other provinces south of Old Mexico were overcome separately by lieutenants of Cortez. In 1527 they were united to form the captain-generalcy of Guatemala, comprising the five provinces of Yucatan, Guatemala, Honduras, Nicaragua, and Costa Rica, and the former Mexican provinces of Chiapas and Soconusco. In 1540 this captain-generalcy was united with that of Mexico to form the vice-royalty of New Spain, but it remained virtually independent of the latter under the direct control of the Council of the Indies at Seville.

Throughout the sixteenth and seventeenth centuries the waters and coasts of the Caribbean Sea were infested with pirates and freebooters of nearly every nationality, but predominantly British. These outlaws usually made common cause against Spain, then sovereign on those coasts; and the injuries they inflicted on her were a source of

<sup>1</sup> In the preparation of this historical sketch of Central America, I have drawn upon the *Grande Encyclopédie; Les Cinq Républiques latines de l'Amérique Centrale*, by Count Maurice de Périgny; *Reseña histórica de Centro-América* by Lorenzo Montúfar, and the admirable studies: *British Rule in Central America* and *History of the Clayton-Bulwer Treaty*, by I. D. Travis and *Anglo-American Isthmian Diplomacy* by Mary W. Williams.

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ill-disguised satisfaction to the nations jealous of the wealth and power she derived from her extensive possessions in the New World.

In harmony with the universal policy of the time, Spain sought to maintain a rigid monopoly of the resources of her American possessions. In opposition to this purpose, the buccaneers established permanent stations on the mainland and within the territory held by Indian tribes that were friendly to them and hostile to Spain. These furnished them food and assisted them in their depredations.

Prior to the conquest of Jamaica by the English in 1655, the buccaneers operated on their own responsibility. After that the Government of England not only connived at their lawless aggressions, but through the governors of Jamaica became in a measure responsible for them. Frequently the governors gave aid to the expeditions and shared in their profits. As the wealth of Spain diminished and her power declined, this state of affairs gradually passed away. The rights of peaceful commerce received more consideration. It was no longer possible for governors of Jamaica to openly abet piratical raids. It became necessary for the buccaneers to change their vocation. Many of them settled down to wood cutting. But they were not suddenly transformed from pirates into peaceful, law-abiding

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settlers. One of the stages of development through which they passed in their evolution from the outlaw, pure and simple, to the more or less civilized and peaceful frontiersman, was that of smuggler. To get around the law by which this vocation was prohibited and penalized, they resorted to various expedients. One of these was to take some tribe, within the Spanish territory, under British protection. In the territory of a people thus allied to England, British subjects could carry on an extensive trade in the name of their chief or king. When once this relation was established there was no redress for Spain but by force of arms.

#### *The Mosquito Coast*

There is on the eastern coast of Central America between Cape Honduras on the north and a point of indefinite location on the south, a tract of low, swampy, unhealthy ground, which perhaps for three hundred years has borne the name of Mosquitia, Mosquito, or the Mosquito Coast or Shore (Map 1). The name is derived from a tribe of Indians called *Moscós* by the Spaniards, *Moustica* by the buccaneers, and *Mosquitos* by the British.<sup>1</sup>

The Mosquitos were composed chiefly of Sam-

<sup>1</sup>This name has no relation to the insect Mosquito. It is thought to have originated in the Spanish word *mosca*, fly.

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bos (Negroes crossed with Indians) and the offspring of whites by Indian, Negro, or Sambo women. They may under primitive conditions have numbered about 5000. They occupied but a small portion of the Mosquito Shore, extending little if at all below the River Mico. In 1687 their head man submitted himself to the governor of Jamaica and in 1720 signed a convention or treaty with that official. In 1740 British forces, in violation of the sovereignty of Spain, occupied the Mosquito Coast, for his protection. In the meantime he had been commissioned king by the governor of Jamaica. British officers were sent to Bluefields,<sup>1</sup> the capital of the Mosquito Coast, to look after the interests of the British and give counsel to the Indian Government; in other words, to rule in the name of the so-called king for the benefit of Great Britain.

Spain remonstrated against these usurpations, but to little purpose. Great Britain promised to remedy them, but under one pretext or another managed not to do so. More frequently she denied the right of Spain to any dominion on the coast, on the ground that the Mosquitos constituted an independent nation which had never been subject to the crown of Spain. Spain always insisted that the Mosquito Coast was a part of her lawful possessions in Central America. Thus

<sup>1</sup> Spelt also Blewfields.

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the dispute continued until it constituted one of the causes of the war between England and Spain about the middle of the eighteenth century (Seven Years' War). By the treaty of peace, concluded in 1763, it was stipulated that Great Britain should abandon the Mosquito Coast, withdrawing her settlers from it. But she did not withdraw them. Her violation of this treaty was a factor in determining Spain to take up arms against her during the American War of Independence. By the Treaty of 1783 it was stipulated that within eighteen months from its ratification, the British settlers should retire to the territory assigned to the settlement of Belize (British Honduras), withdrawing from the Spanish continent and islands.<sup>1</sup> But the eighteen months passed away and neither stipulation was carried out.

On the 5th of January, 1785, the king of Spain issued the following declaration:

The Mosquito Indians situated in one of the provinces of Guatemala have been vassals of the crown of Spain since the conquest and subjection of those dominions, and although at times they rebelled with the aid and instigation of various English adventurers who were surreptitiously establishing themselves therein, . . . they

<sup>1</sup> . . . *tous les Anglais qui pourraient se trouver dispersés partout ailleurs, soit sur le continent espagnol, soit sur les îles quelconques, dépendantes du susdit continent espagnol, et par telle raison quo ce fût, sans exception, se réuniront dans le canton qui vient d' être circonscrit [Belize] dans le terme de dix-huit mois, à compter de l'échange des ratifications.*



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have repeatedly petitioned to return to the dominion of Spain and it was finally conceded to them that they be graciously admitted to the reconciliation which they desired.<sup>1</sup>

But Great Britain would not admit that the Mosquito Coast was included in the definition "Spanish Continent."<sup>2</sup> The consequence was a treaty concluded in 1786, which provided that all British subjects and other settlers who had enjoyed the protection of Great Britain should "evacuate the country of the Mosquitos" and the "Continent in general," beyond the boundary agreed upon for British Honduras, within a period of six months.<sup>3</sup> About the middle of 1787 this evacuation was nearly accomplished, but it was never completed. With the assistance of the few Englishmen who remained, the British Government easily contrived to preserve and even strengthen its hold on the country. A Mosquito flag was formed with the British Union Jack in the upper canton, the remainder consisting of alternate blue and white horizontal stripes, with a crown in the lower canton.

One of the foremost authorities on Central America says:

The name (Mosquito Shore) was always purely geo-

<sup>1</sup> Montúfar, *opus cit.*, IV, 99.

<sup>2</sup> *Hist. of Cent. Am.*, II, 606. Bancroft.

<sup>3</sup> These treaties, 1763, 1783, 1786 or extracts thereof, are published in *Sen. Ex. Doc. 194*, 47 Cong., 1 sess. (1882).

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graphical and never conveyed or was intended to convey any idea of political separation from the rest of Central America. From the frequent mention of late years, of a personage styled the King of the Mosquitos, some portion of the public may have fallen into the error of supposing that what are called the Mosquito Indians do really recognize and obey some such potentate. Nothing could be farther from the truth. No form of government ever existed among these people, except such as was vested in their local head men, or chiefs, who have often been at variance and in open hostility among themselves. Some of these have assumed the title of governor, others of general, admiral, etc. . . . without however, having the slightest comprehension of the meaning of the terms. When the English superintendent of Belize found it convenient to manufacture a King on the Mosquito Shore, a number of these head men were got together and by liberal appliance of rum, induced to fix their marks to a paper, which was afterward produced as an "act of allegiance" to a Sambo selected for the purpose by the English agents. But the chiefs neither understood what they did nor regarded it afterwards. The fiction, however, answered its purpose.<sup>1</sup>

The following text may be taken as typical of such acts of allegiance:

*Sire:*

Whereas by an appointed meeting of the most principal inhabitants commanding the different townships of Southeastern Mosquito Shore, from the confines of Wanks River to Buckatora Lagoon inclusive, commanded by Prince Stephen, King regent of the above shore, held at Woolang on the 14th of November and year of our Lord

<sup>1</sup> *Notes on Central America, etc.*, by E. G. Squier, pp. 361, 365.

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1815, in behalf of giving our assent, consent, choice and declaration to, for and of, the said hereditary prince Frederic, to be our lawful King and Sovereign, and we whose names are hereunto subscribed do give our assent, consent, choice and declaration to, for and of, the said hereditary Prince Frederic, to be our lawful King and sovereign.

The Mosquito kings were crowned at Belize or Jamaica. British officials annually visited the Mosquito Coast and distributed presents among the Indian inhabitants.

By a treaty of 1814 with Spain, Great Britain was expressly excluded *from the country of the Mosquitos, the continent in general, and the islands adjacent without exception.* This treaty was in force when Mexico and Guatemala declared their independence from Spain, Mexico on the 24th of February and Guatemala on the 14th of September, 1821. Guatemala consisted at this time of the five provinces of Guatemala, Honduras, Salvador, Nicaragua, and Costa Rica, and the former Mexican provinces of Chiapas and Soconusco. She soon lost the province of Salvador, and, thus reduced, united herself with Mexico. On the 1st of July, 1823, she separated from Mexico, in which act she was joined by Salvador. On the 17th of December, 1823, she became a republic.<sup>1</sup> On the 22nd of November, 1824, her national assembly

<sup>1</sup> *Reseña, histórica de Centro-América* by Lorenzo Montúfar, Vol. I., Dedication.

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completed the task of framing a constitution, but in the meantime, the province of Chiapas had reunited itself to Mexico.<sup>1</sup> The new republic took the name of *La Federacion de Centro-América*, which literally translated would be *The Federation of Center America*. Our Government dealt with it originally as the "Federation of the Centre of America."<sup>2</sup> It later applied other designations to it until its dissolution, which may be considered as taking place on the 1st of February, 1839.<sup>3</sup>

The province, afterwards state, of Los Altos, was formed in 1838 by secession from Guatemala, but was reunited with the latter on the 8th of May, 1849. Except for the brief period covered by the separate existence of Los Altos, during which there were six component provinces, the federation consisted of the five provinces of Guatemala, Honduras, Salvador, Nicaragua, and Costa Rica.

During the existence of the federation, the term Guatemala should have been applied only to the province of that name, and after its dissolution only to the independent State which that province became. But the federation itself was not un-

<sup>1</sup> Fullarton's *Gazetteer of the World*. Article "Central America." Soconusco was taken possession of by Mexico in 1843, under protest from Guatemala (Baily).

<sup>2</sup> Treaty signed Dec. 5, 1825.

<sup>3</sup> *Efemérides*, etc., by Alejandro Marure, p. 48.

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commonly designated on maps as *Guatemala* or *Guatemala*, and after its dissolution that designation was occasionally applied to the territory which it had occupied.

Other names applied to the federation or to the territory pertaining or which had pertained, to it were: *Central Provinces of America* (London, 1825); *Republic of the Centre* (Clay to Williams, Feb. 10, 1826); *Republic of Central America* (Clay to House, Mch. 14, 1826); *Federal Republic of Central America* (Canal Contract, June 14, 1826); *Central Government of America* (De Witt Clinton to G. Van Rensselaer and others, Oct. 6, 1826); *United Provinces of Central America* (New York, 1828); *United States of Central America* (Guatemala, 1834);<sup>1</sup> *Central States of America* (London, 1836, 1838); *Confederacy of Central America* (Clayton to Lawrence, Oct. 20th, 1849).

The term "Central America" by itself was rarely used to designate the political unit, the federation of Centre America. It was taken ordinarily in a geographical sense and applied to a section of America extending, as commonly understood, from the Isthmus of Tehuantepec on the north to the Isthmus of Panama or of Darien on the south. Other geographical names for this region were the *American Isthmus*, the *Isthmus of America*, the *Great American Isthmus*, the *Great*

<sup>1</sup> By Frederick Chatfield, British Consul-General.

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*Central American Isthmus.* Central America was commonly included in North America and yet referred to as "the isthmus which connects North and South America."<sup>1</sup> The Isthmus of Panama was also, but exceptionally, represented as connecting North and South America.<sup>2</sup>

The Spanish for Central America is not *Centro-América*, but *América Central*, which was more or less used in distinction from *Centro-América*, as Central America was or should have been used, in distinction from Centre America.<sup>3</sup>

By 1830 Great Britain's nominal protectorate over the Mosquitos had developed into a practical control of their affairs.

From about this time—out of respect, it would seem, for the Central American republic—her interference in the affairs of the Mosquitos became less active. But with the dissolution of the federal republic came a series of encroachments, more

<sup>1</sup> Sen. Resol, Mch. 3, 1835; Hughes to Clayton, Oct. 25, 1849; Taylor's Mess. to Cong., Dec. 4, 1849; Clayton-Bulwer Treaty, Art. VIII.

<sup>2</sup> *Chambers's Information for the People*, Edinburgh, 1842, p. 337.

<sup>3</sup> This may be illustrated by the following quotation from a work published in 1851: *El país que lleva actualmente el nombre de República de Costa Rica, es aquella porcion de la América Central que se extiende entre Nicaragua y Panama; bañandola de un lado el Oceano Pacífico y del orto el Oceana Atlántico. Provincia en un tiempo del Reino de Guatemala, y luego Estado de la Federacion de Centro-América, se hizo enteramente independiente desde que se extinguió el Gobierno General de aquella Federacion por los años 1838 á 1840. . . . (Bosquejo de la República de Costa Rica by Felipe Molino, p. 9.)*

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arrogant and offensive than those of any former period. On the 12th of August, 1841, the superintendent of the British settlement at Belize landed at San Juan del Norte accompanied by the King of the Mosquitos, dragged from his office the Nicaraguan commandant of the port, Colonel Quijano, carried him off, and abandoned him on an uninhabited coast. The object of this outrage was to assert the majesty of the Indian King as sovereign over the Mosquito Coast, including the mouths of the San Juan.<sup>1</sup>

Mr. Chatfield, the British consul-general in Central America, wrote to the Minister of Foreign Affairs of Nicaragua (October 24, 1843):

About the year 1687, the Duke of Albemarle being governor of Jamaica, the Mosquito Indians made formal cession of their territory to the King of England.<sup>2</sup>

In this pretention Mr. Chatfield was not supported by his Government. Great Britain did not claim the Mosquito Territory as belonging to her. She held that it belonged to the Mosquitos as an independent people and even this point she did not press unless it was contested.

In the same letter, Chatfield alleged that the place from which Colonel Quijano had been removed was not Nicaraguan, but Mosquito Territory; that he, Chatfield, had represented to the

<sup>1</sup> Montúfar, *opus cit.*, IV, 93.

<sup>2</sup> Translated from the Spanish. Montúfar, *opus cit.*, IV, 102.

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governor-general of Central America the existence of the Mosquito nation and the circumstance that Great Britain would not view with indifference the usurpation of the territory of a monarch with which she was in close relation, and that Spain herself had recognized the Mosquito nation on the occasion of a visit made by Prince Estéban to San Salvador and Guatemala.<sup>1</sup>

The Nicaraguan minister contested that Mosquito was not a State, that to be a State it would have to be sovereign, and that the Mosquitos had not that quality.<sup>2</sup> . . .

He quoted the following paragraphs from the Constitution of Nicaragua :

Article 5, Constitution of 1824.

The territory of the Republic [of Center America] is the same as that formerly constituting the old kingdom of Guatemala, excepting for the present, the province of Chiapas.

Article 2, Constitution of 1838.

The territory of the State [of Nicaragua] is the same as that which formerly constituted the Province of Nicaragua. Its limits are: on the East and Northeast, the Sea of the Antilles [Caribbean Sea]; on the North and Northwest, the State of Honduras; on the East and South, the Pacific Ocean; and on the Southeast, the State of Costa Rica. The lines of demarcation between the adjoining states shall be defined by a law which shall form part of the constitution.

<sup>1</sup> Chatfield to Orosco, Oct. 24, 1842.

<sup>2</sup> Montúfar, *opus cit.*, IV, 99.



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“It is thus proved,” said the minister, “that neither Spain, nor Central America, nor Nicaragua has ever recognized a Mosquito State or territory, with the people and States of which they cultivated harmony with a view to civilizing them, for which reason the courtesies paid the Spanish authorities to the Mosquito whom you call Prince, cannot be construed as a recognition of him. . . .”

The relation established between the Mosquito Indians and the British Government “could not have secured to England more than the paltry trade she might have carried on with a horde of savages whose purchases consisted at the most of a few rustic implements, and could by no means have given her the preëminent rights of a close alliance.”<sup>1</sup>

In 1843 a British diplomatic and consular agent was accredited to Mosquito.<sup>2</sup> This functionary, as adviser of the alleged sovereign, was the power behind the throne. The reëstablishment of British dominion over the Mosquito Coast may be considered as dating from his appointment.

In 1845, Lord Aberdeen, on behalf of Sir Robert

<sup>1</sup> Orosco to Chatfield. Montúfar, *op. cit.*, IV, 100-106.

<sup>2</sup> When Great Britain determined to resume her dominion over the Mosquito Shore, in the name of a protectorate, is not known with any degree of certainty in the United States. The first information on the subject in the Department of State at Washington was contained in a despatch of the 20th January, 1842 (Buchanan to Clarendon, Jan. 6, 1854).

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Peel's Government, set up a claim to San Juan as belonging to the Mosquitos.<sup>1</sup> It was probably in answer thereto that Nicaragua took forcible possession of the place in 1846. She declined to participate with Great Britain in the determination of the territory pertaining to the Mosquitos. As a consequence Lord Palmerston, in 1847, sent an instruction to all the diplomatic and other agents of the Crown in Central America and the adjacent countries, requiring them to report "what authentic information they could obtain as to the boundaries claimed by the King of Mosquito" and also what in their opinion was "the line of boundary which her Majesty's Government should insist upon as essential for the security and well-being of the Mosquito State." The two resulting boundaries, one claimed by the King of the Mosquitos and one asserted by the British Government, are shown on the *Map of Central America* by James Wyld, which is reproduced in Senate Executive Documents, No. 75, First Session, Fifty-first Congress. Among the few other authentic maps showing either of these boundaries are Baily's and one published by the United States Coast Survey, in March, 1856. The Mosquito Shore, with a western boundary line, appears in a map by Desmadryle Juc, published in Paris in 1830.

<sup>1</sup> *Quart. Rev.*, XCIX. Article by H. L. Bulwer.

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There are several maps of the Mosquito country (about 1758) in the Spanish Archives at Madrid; on one of these (No. 49 in the Catalogue) the inland boundary is traced in a yellow line.<sup>1</sup>

Great Britain informed Nicaragua and the other States bordering on the "Kingdom of Mosquito" that she considered the King of Mosquito to be entitled to the extent of coast reaching from Cape Honduras to the River San Juan.<sup>2</sup>

Up to that period, however, and among geographers generally, the Mosquito Shore was understood only as comprehending the coast lying between Cape Gracias á Dios and Bluefields Lagoon, including the latter; that is to say, between the 12th and 15th degrees of north latitude, a distance of about 200 miles. The attempts which have been made to apply the name to a greater extent of shore have had their origin in strictly political considerations.<sup>3</sup>

In October, 1847, the Nicaraguan Government replied to the British communication that it did not recognize any king of Mosquito, or any such territorial pretensions; and formally laid claim to the northern coast and the port of San Juan as a part of its own dominion, declaring that it would regard as war on the part of the British any oc-

<sup>1</sup> *Relacion descriptiva, de los Mapas, Planos, etc., de la Audiencia y Capitanía general de Guatemala (Guatemala, San Salvador, Honduras, Nicaragua, y Costa Rica) existentes en el Archivo general de Indias* by P. T. Lanzas, Chief of Archives.

<sup>2</sup> Appendix A.

<sup>3</sup> *The States of Central America* by E. G. Squier, pp. 629, 630.

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cupation of the port of San Juan effected by the Mosquitos under British protection. The council of state of Mosquito responded to this defiance by a resolution to establish the rights of sovereignty of the King of Mosquito over all the mouths of San Juan and over the navigation of the lower part of that river, on the appearance of the first British ship of war having orders to coöperate with the Mosquito Government. On the 8th of December, 1847, the name San Juan was anglicized as Greytown after Sir Charles Grey, Governor of Jamaica, by direction of the King in Council.<sup>1</sup> Soon after this her Majesty's ships *Alarm* and *Vixen* arrived off Bluefields, and on the 1st of January, 1848, a British force proceeded to occupy San Juan.<sup>2</sup> It met with no resistance, but its action gave rise, two days later, to the following protest:

The supreme government of the sovereign State of Nicaragua has done me the honor to entrust me with a commission to enter upon friendly communication with the British Agent who may present himself at this port, for the purpose of avoiding the violent occupation of it by the troops under his command, under the pretended right which is sought to be alleged in favor of a chief of the tribes of Mosquitos, who under the title of King, without being recognized, is supported by the English force to which at present there is no equal force in this port to offer opposition, . . . I protest against the viola-

<sup>1</sup> *The Gate of the Pacific* by Bedford Pim, p. 61.

<sup>2</sup> Fullarton's *Gazetteer*, Article "Mosquito Territory."

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tion and outrage inflicted on the rights of the state, and I make its authors responsible in the face of the civilized world, for the effusion of blood which such an act must cause, as well as for the loss, damage, and injury which public and mercantile interests, national and foreign, may suffer, the loss of vessels, cattle, and other agricultural produce, goods, etc.

To this communication the British agent and consul-general sent the following reply:

VIXEN, ST. JOHN'S,  
Jan. 3, 1848.

*Sir:*

As your government had invested you with no power to recognize the authority of the King of Mosquito at the mouth of the St. John's or to enter into any amicable arrangements for a mutual and beneficial intercourse between the port and the interior, and more particularly as you refused to admit the right of the King to be recognized as an independent Prince, you removed all basis for negotiations.

Assuming for the sake of argument that the King's right could be disputed and that the Spanish Sovereigns had a right of dominion, from absolute possession, over the territory in question, it would appear that that right devolved upon New Granada<sup>1</sup> rather than upon Central America, for under the colonial régime, the jurisdiction over this territory . . . was finally restored to New Granada by Royal letters patent dated 30th November, 1803.<sup>2</sup>

<sup>1</sup> Present Colombia.

<sup>2</sup> Order of the King of Spain, Nov. 30, 1803. "The King has

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Therefore if the right of the Spanish sovereigns was valid, so also is that of New Granada; and consequently the pretension of Central America is arbitrary and null.

The jurisdiction of the Mosquito Coast was not "restored" to New Granada, but was for the first time vested in that vice-royalty, by the royal order of 1803; and the object of this transfer was better to secure the country against the very thing which Great Britain was trying to fasten upon it, British dominion. Whether the Mosquito Coast belonged to New Granada or to Nicaragua, it did not belong either to Great Britain or to the Mosquitos. Its later history and present status would seem to justify the claims of ownership made by Nicaragua.

On the 8th of January, 1848, the Nicaraguan forces retook the port of San Juan. They might then have been left in possession of it, but for the apprehension of another danger. On the day that it became known at Vera Cruz that a treaty of peace had been signed by which California and New Mexico were transferred to the United States,<sup>1</sup> a British fleet set sail from Vera Cruz, and

resolved that the Islands of Saint André and the part of the Mosquito Shore comprised between Cape Gracias á Dios and the Chagres River [boundary between Guatemala and Santa Fé, or New Mexico] shall be separated from the government of Guatemala and incorporated in the vice-royalty of Santa Fé."

<sup>1</sup> Treaty of Guadalupe Hidalgo, concluded Feb. 2, 1848; ratification exchanged May 30, 1848.

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proceeded to the mouth of the San Juan River. On the 12th of January it took possession of the town and established British authority over it in the name of the Mosquito Indians. A force marched inland to the Lake of Nicaragua, where, on the 7th of March, a treaty was concluded between Great Britain and Nicaragua. The first article provided for the return of the prisoners taken by the Nicaraguan forces on the 8th of January. Article III was worded as follows:

The Mosquito flag and other effects taken in the same port on the same day shall be returned immediately; and as the officer commanding His Majesty's forces desires to obtain from the government of Nicaragua a satisfactory explanation of the outrage which the said commander thinks to have been perpetrated upon the British flag by the lowering of the Mosquito flag which is under its protection, the government of Nicaragua declares, "that it did not know that the Mosquito flag stood in such relation to that of England that an outrage upon the former involved an outrage upon the English flag; and that far from intending to insult the latter power, it earnestly desires to cultivate the most amicable relations with that government."

In Articles III and IV, Nicaragua promised not to disturb the peaceful inhabitants of San Juan and that no custom house should be established in the neighborhood of that port. But the treaty did not cede to Great Britain any Nicaraguan territory or acknowledge her title or that of the Mosquito King to any part of it.

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In the meantime the United States had taken action in anticipation of British encroachment for increasing its political influence in Central America.

In 1846 it signed with New Granada a treaty looking to the construction of a canal across the Isthmus of Panama, which was ratified in 1848. This was the first diplomatic transaction by which the Government of the United States acquired treaty rights and assumed treaty obligations in reference to an isthmian canal. It contained among others the following provisions:

Article XXXV. . . . The government of New Granada guarantees to the government of the United States that the right of way of transit across the Isthmus of Panama upon any modes of communication that may now exist, or that may be hereafter constructed, shall be open and free to the government and citizens of the United States . . . the United States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be interrupted or embarrassed in any future time while this treaty exists; and in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property with New Granada has and possesses over the said territory.

In 1849 the United States obtained a concession from New Granada for the construction of the Panama Railroad.



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The British took alarm, fearing that the active, audacious, and enterprising Yankees would acquire other privileges in the strip of land uniting the two continents.<sup>1</sup> For the piercing, however, of the latter, the most practicable route seemed to be not the Isthmus of Panama but the system of rivers, lakes, and lowlands which connected the harbor of San Juan on the Atlantic with the Bay of Fonseca or the harbor of Realejo on the Pacific. From the sea up to the Machuca Rapids, about thirty miles, the San Juan River was in dispute between Nicaragua on one side and Great Britain (or the Mosquitos) and New Granada on the other. Another portion of it was in dispute between Nicaragua and Costa Rica. The Bay of Fonseca was partly under the jurisdiction of Honduras and partly under that of Nicaragua. So in negotiating for this canal the United States would or might have to deal with the following States: New Granada, Nicaragua, Costa Rica, and Honduras, to say nothing of the Mosquitos and Great Britain.

The British-Mosquito occupation of San Juan made that place virtually a British dependency, blocking the western terminus of the interoceanic transit. In the negotiation of the Clayton-Bulwer Treaty, the United States and Great Britain aimed primarily at two different objects: the United

<sup>1</sup> *Union latino-americana* by Torres-Caicedo, p. 74.

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States at the realization of interoceanic water communication and Great Britain at the obstruction of the apprehended expansion of the United States in Central America. By force of arms Great Britain held the key to the situation at San Juan, and by her position in the Mosquito country, in British Honduras, in the Bay Islands, and in Jamaica was capable of prompt and vigorous action in the retention and utilization of that advantage. For the problem thus presented to the United States there were two natural solutions: the complete and absolute withdrawal by Great Britain from every position that she held in those territories, or her effectual inhibition from using any such position to oppose the free, unobstructed use of the canal or the expansion of the United States.

The solution which President Polk decided upon and sought through his secretary of state, James Buchanan, to bring about was a sort of compromise. It was to induce or compel the British to abandon their protectorate over the Mosquito Indians, thereby ceasing to obstruct the construction of the canal and surrendering much of their power to command or threaten the route adopted for it. Whether to act directly upon Great Britain or to influence her indirectly through the States of Central America, was still a question when, on the 3d of June, 1848, Buchanan wrote to

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the United States agent in Central America, Mr. Elijah Hise, chargé d'affaires :

Whilst it is our intention to maintain our established policy of non-intervention in the concerns of foreign nations, you are instructed, by your counsel and advice, should suitable occasions offer, to promote the reunion of the states which formed the federation of Central America. In a federal union among themselves consist their strength. They will thus avoid domestic dissensions and render themselves respected by the world. These truths you can impress upon them by the most powerful argument. . . .

I have no doubt that the dissolution of the Confederacy of Central America has encouraged Great Britain in her encroachments upon the territories of Honduras, Nicaragua and Costa Rica, under the mask of protecting the so-called Kingdom of the Mosquitos. . . . Her purpose is probably to obtain the control of the route for a railroad and canal between the Atlantic and Pacific oceans by the way of Lake Nicaragua. . . .

The government of the United States has not yet determined what course it will pursue in regard to the encroachments of the British government as protector of the King and Kingdom of the Mosquitos, but you are instructed to obtain all the information within your power upon the nature and extent of these encroachments and communicate it with the least possible delay to this department. We are also desirous to learn the number of the Mosquito tribe, the degree of civilization they have attained and everything else concerning them.

. . . you may inform the secretary of state of Guatemala that you are empowered to negotiate a treaty with his government, . . .

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You are herewith furnished with a full power to conclude a treaty of commerce with the Republic of San Salvador. Similar treaties with the other states of Central America would probably be useful in fostering our trade with them, and in protecting our citizens who may visit or reside in their territories. It is not, however, deemed advisable to empower you to conclude a treaty with either Nicaragua, Honduras or Costa Rica, until you shall have communicated to the department more full and authentic information in regard to those states than that which it now possesses. You will accordingly be diligent in collecting this information, which it would be desirable that the department should receive without any delay which can be avoided.

In spite of the injunction not to treat with Honduras, Nicaragua, or Costa Rica, Hise took it on himself to negotiate a commercial treaty with Honduras and both a commercial and a canal treaty with Nicaragua. The canal treaty, which became known as the Hise-Selva Treaty, guaranteed the neutrality of Nicaragua. It was signed on the 21st of June, 1849.<sup>1</sup>

In the meantime a new administration under President Taylor, with John M. Clayton as Secretary of State, had been inaugurated at Washington.

In his first annual message to Congress, December 4, 1848, President Taylor said:

Having ascertained that there is no prospect of the

<sup>1</sup> *Sen. Ex. Doc. 194*, 47 cong. 1 sess., p. 41.

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reunion of the five states of Central America which formerly composed the Republic of that name, we have separately negotiated with some of them, treaties of amity and commerce which will be laid before the senate.

A contract having been concluded by a company composed of American citizens for the purpose of constructing a ship canal through the territory of that state to connect the Atlantic and Pacific Oceans, I have directed the negotiation of a treaty with Nicaragua, pledging both governments to protect those who shall engage in and perfect the work. . . .

The Hise-Selva Treaty was never submitted to the Senate. Mr. Hise was recalled, and Mr. E. G. Squier was appointed as his successor. On the 3rd of September, 1849, Mr. Squier, acting under instructions from the Department of State, concluded a new treaty, by which the United States guaranteed, not the sovereignty of Nicaragua, but the neutrality of the canal; and secured for the citizens of the United States the exclusive right of its construction and operation. The treaty recognized Nicaragua as sovereign of the route chosen for the canal, thus contravening the contention of Great Britain that a considerable and vitally important part of it was under the sovereignty of the Mosquitos. This treaty was subsequently (March 19, 1850) sent to the Senate for its advice and consent as to ratification, but it was never acted on.

Mr. Squier sought also by timely negotiation

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to anticipate any attempt on the part of Great Britain to close the western as she had closed the eastern end of the route. By a protocol signed the 28th of September, 1849, with the plenipotentiary of Honduras,<sup>1</sup> he obtained from that State an option on Tigre Island, a commanding position in the Bay of Fonseca. The British agent in Central America, Mr. Frederick Chatfield, tried to counter this diplomacy with violence. On the 16th of October he had the island occupied by a British force. Squier protested. The British force was withdrawn and the island restored to Honduras, by order of Admiral Hornby, commanding the British fleets in the West Indies. Later both Chatfield and Squier were rebuked by their Governments for the parts which they had played in the affair. Clayton, through the United States minister in London, demanded a disavowal of the act of occupation, which, after some delay, was given, but not in a satisfactory manner.<sup>2</sup>

Had Chatfield left the United States in its optional control of Tigre Island, the effect would have been at the most to prevent Great Britain from constructing the canal herself, which she did not want to do. It would not have removed the British obstruction at San Juan or have made it possible for the United States to construct the

<sup>1</sup> Appendix B.

<sup>2</sup> *Anglo-American Isthmian Diplomacy* by M. W. Williams, p. 66.

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canal itself, which the United States did want to do. Blocking the work was more disconcerting to the United States than it was to Great Britain. The latter, as mistress of San Juan, had nothing to fear from any obstruction of the route elsewhere. She could confidently look forward to a proposal from the United States for a joint undertaking. This would furnish her the opportunity she wanted to impose conditions on the United States, preventing or restricting its expansion in Central America.

Mr. Clayton was willing to accept war with Great Britain if that were necessary to the construction and use of an interoceanic railroad or canal, but he would not go that length to have it a purely American one. He accordingly proposed to the British Government through our minister at London, a joint enterprise under joint control, indicating in the following terms that, if his proposition were declined, the United States would proceed with the enterprise independently of Great Britain.

If however, the British Government shall reject these overtures on our part and shall refuse to coöperate with us in the generous and philanthropic scheme of rendering the interoceanic communication by way of the port and river San Juan, free to all nations upon the same terms, we shall deem ourselves justified in protecting our interests independently of her aid and despite her opposition and hostility. With a view to this alternative we

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have a treaty with the State of Nicaragua, a copy of which has been sent to you, and the stipulations of which you should unreservedly impart to Lord Palmerston.

You will inform him, however, that this treaty was concluded without a power or instructions from this government; that the President had no knowledge of its existence or of the intention to form it, until it was presented to him by Mr. Hise, our late chargé d'affaires to Guatemala, about the first of September last, and that consequently we are not bound to ratify it, and will take no step for that purpose, if we can by arrangement with the British government place our interests upon a just and satisfactory foundation. But if our efforts to this end should be abortive, the president will not hesitate to submit this or some other treaty which may be concluded by the present chargé d'affaires to Guatamala [E. G. Squier] to the Senate of the United States for their advice and consent, with a view to its ratification, and if that enlightened body should approve it he [the President] also will give it his hearty sanction, and will exert all his constitutional power to execute its provisions in good faith, a determination in which he may confidently count on the good will of the people of the United States.<sup>1</sup>

With a view to such negotiation Mr. Abbott Lawrence had been sent as United States minister to London, where he arrived in November, 1849.

Mr. Lawrence was a Boston merchant who, in partnership with his brother Amos, had amassed a vast fortune. He was also a philanthropist and something of a politician. He founded the Lawrence Scientific School and sat in Congress during the session of 1839-40. But he had no experience

<sup>1</sup> Clayton to Lawrence, Oct. 20, 1849.



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in diplomacy, and his health, as we shall see, was to fail him at an early stage of his mission.

About the time when he arrived in London, Sir Henry Lytton Bulwer sailed from England with credentials as minister to the United States. On the 24th of December he was formally presented to President Taylor. Sir Henry Bulwer was at this time at the zenith of his career, having passed twenty-two of the thirty-eight years which he was to devote to diplomatic service. A review of his past life may help us to understand and follow his course of action in the United States.

He left Cambridge University without taking a degree, and purchased the position of cornet in the army, but this did not suit him. He sold out and had himself attached to the British legation at Berlin. On his way to his post (1827) he managed to carry away with him in a few days from thirty to forty thousand dollars won at play. With this capital he gained admission to a whist club at Berlin which was in the habit of meeting at Prince Wittgenstein's, and included among its members the most notable people about the Court. Bulwer not only came off winner, but also picked up important information to which his official superiors had not access. With this advantage he built up a reputation in the British Foreign Office, which insured him rapid promotion. He was soon sent as attaché to Vienna and then to The Hague.<sup>1</sup>

<sup>1</sup> *Retrospections of an Active Life* by J. Bigelow, II, 404.

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In 1830 he was detached from The Hague to watch the progress of the revolution in Belgium. Lord Palmerston was so well pleased with his reports that he brought him into Parliament. In 1837 he went, as secretary of the British embassy to Constantinople, where he negotiated a commercial treaty of great importance for England. In 1839 and 1840 he was secretary at Paris and in 1843 was sent as ambassador to Madrid. In this position his sympathy with the liberal insurgents and his consequent intrigues brought him into such ill favor with the Government that on the 12th of June, 1848, he was summarily required to quit Madrid within twenty-four hours and Spain within forty-eight. Before his return to England he was gazetted Knight in the Companion of the Bath. The coincidence in time between this distinction and the termination of his mission to Spain has been represented as purely accidental, but it may be reasonably attributed to approval in high quarters of his machinations in Spain. It was at this juncture that he was selected to represent Great Britain in the United States.

By art and nature he was peculiarly fitted for the task which he was about to undertake. He had associated with very remarkable men—with Prince Talleyrand, Prince Lieven, Count d'Orsay, Lord Palmerston, Lord Beaconsfield, Lord Mel-

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bourne, besides many other English statesmen. Under their influence, it would seem, he had codified his life in fixed rules or maxims. Among these canons of his worldly wisdom were the following:

Never discuss, because neither you nor your adversary will give in to the other, and he will ever consider you a stupid fellow for not agreeing with him.

It is very difficult to get stupid people to change their opinions, for they find it so hard to get an idea that they don't like to lose one.

Nothing is so common as to make a great blunder in order to remedy a small one.

Nothing is so foolish as to be wise out of season.<sup>1</sup>

An American diplomat from whom I have already quoted, speaking from personal recollection, says:

He was a singularly fascinating man; fascinating without being lovable. . . . His talk was always well informed without being in the least pedantic or intensive. Every word was most skillfully adapted to his purpose, whatever that purpose might be. The wish to please and win you was artfully concealed under a languid, tired-out, valetudinarian manner, which conveyed an impression of the most perfect indifference about the effect he was trying to produce. This was the wooden horse in which he entered the citadels he wished to hold. . . . He was never *bavard*; he never talked apparently to gratify his vanity, nor did wine or stimulants of any kind,

<sup>1</sup> *Some Maxims of the late Lord Dalling and Bulwer, Nineteenth Cent.* vol. 56, p. 262.

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in the use of which he was anything but abstemious, seem to increase his loquacity a particle. Silence with him was not infrequently as effective an instrument as speech. It would not do to put too much trust in his sincerity, nor any at all in his sentimental professions. He was an Epicurean from head to foot; the world was his oyster, which with any weapon that would best serve his purpose, he would open. His languor of manner was not, however, altogether artificial. His health was delicate, and he was a fearful consumer of drugs. . . . To this destructive habit was to be attributed, no doubt his cadaverous and utterly colorless complexion,—in this as in many other respects suggesting a comparison with Talleyrand, whom of all modern Europeans, I think, he would have most wished to be thought to resemble. . . . He was unusually well acquainted with all classes and every rank of French society, not even excepting the demi-monde, in which, as everywhere else, he knew how to make himself acceptable at a minimum cost of self respect. . . . he knew George Sand intimately, and one of her most famous novels, *Mauprat*, is said to have been inspired by him.<sup>1</sup>

John M. Clayton, who was to measure himself with Sir Henry Bulwer as co-negotiator of the Clayton-Bulwer Treaty, had an advantage over Sir Henry in being an accomplished lawyer, equitable, civil, and criminal. He had, like Bulwer, served his country as a legislator, having sat in the Senate with Daniel Webster, Henry Clay, T. H. Benton, J. C. Calhoun, Edward Livingston, and R. Y. Hayne. During the Presidency of Gen-

<sup>1</sup> Bigelow, *opus cit.*, II, pp. 386, 387, 403, 404. See also *London Times*, 1872—June 3, p. 6; June 6, p. 10; June 7, p. 8.

## *The Clayton-Bulwer Negotiations*

eral Jackson, at an executive session, held on the 3rd of March, 1835, he introduced the following resolution which was carried:

*Resolved*, That the President of the United States be respectfully requested to consider the expediency of opening negotiations with the governments of other nations, and particularly with the governments of Central America and New Granada, for the purpose of effectually protecting, by suitable treaty stipulations with them, such individuals or companies as may undertake to open a communication between the Atlantic and Pacific oceans by the construction of a ship canal across the isthmus which connects North and South America, and of securing forever by such stipulations, the free and equal right to navigate such canal to all such nations, on the payment of such reasonable tolls as may be established to compensate the capitalists who may engage in such undertaking, and complete the work.

As Secretary of State he wrote on the 4th of September, 1849, the letter to Colonel Hughes of the topographical engineers, to which reference has already been made:

In the conversation I had with you last evening on several topics of deep concern to the present and future interests of our country, I was struck by your judicious and intelligent observations on the subject of the various routes for connecting the Atlantic and Pacific Oceans which have so long been discussed before the world, and which have now assumed an extraordinary importance. The subject is one which attracted my attention twenty years ago, since which time it has never ceased to occupy

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my mind; and I have neglected no occasion of seeking from well informed persons, accurate, reliable and useful information in regard to it, such as might be calculated to diffuse light among our citizens and serve as a safe guide to the public councils of the nation. With these objects very much at heart, I made a verbal request that you would do me the favor to address a communication to me upon these points we conversed about, entering fully into the questions they involve, and giving in detail your views and opinions thereon, and the considerations and facts upon which they are based, and presenting such information and suggestions as your experience and knowledge will enable you to submit.

Your attention is specially invited to the importance of a ship canal, of such dimensions as to admit vessels of the largest class, connecting the Atlantic and Pacific Oceans; and you are requested to state whether there is reason to believe that such a route or routes may be found across the American Isthmus, and if so where?—the length, capacity, supply of water dimensions, and probable cost of the construction, of a work on the most eligible line that is known to exist, best calculated to subserve the great ends of commerce of the civilized world, and of the present and prospective trade of the Pacific and Indian Oceans. You are also requested to present your views at large in reference to the different projects which have been presented to the public for a railroad from the Mississippi to the Pacific exclusively within the territories of the United States; and you will be pleased to submit all the information you may be able to collect touching this important question.<sup>1</sup>

While not as entertaining perhaps as Bulwer, Clayton had “exceeding powers of conversation”

<sup>1</sup> *Letter in answer to the Hon. John M. Clayton, etc., p. 3.*

## *The Clayton-Bulwer Negotiations*

and an amiable disposition, by which he became very popular in Washington society.<sup>1</sup>

So far as interest in one's work is a factor of efficiency, the foregoing resolution and communication augur well for the success of Secretary Clayton in any mission he might undertake for the establishment of transcontinental or transisthmian communication. But he had never held any diplomatic office. He had not the insight into human character, the political sense, or the statesmanlike vision of Sir Henry Bulwer.

In 1868 Bulwer published a work entitled *Historical Characters: Mackintosh, Canning, Talleyrand, Corbett, Peel*. Treating of the great French diplomat, he says:

“The particular and especial talent of M. de Talleyrand was, as I have more than once exemplified, his tact, the art of seizing the important point in an affair, the peculiar characteristic of an individual, the genius and tendency of an epoch.”

Bulwer must have felt as he wrote this passage, that he was describing himself or ideals of his, for the faculties which he here ascribes to Talleyrand were eminently his own.

When the United States thought of undertaking or promoting a work of such world-wide interest

<sup>1</sup> *Memoirs of John M. Clayton* by J. P. Comegys.

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and importance as the construction of an inter-oceanic waterway, it occurred to Great Britain, or at least to Sir Henry Bulwer, that this might be an opportunity to entice the United States into an association that would commit it to participating in the international politics of the Old World and admit Great Britain to participation in the affairs of the New. The coöperation of Great Britain and the United States in the grand task of enlightening and uplifting humanity, of reforming the world according to Anglo-Saxon patterns and ideals, was the form in which the new British minister presented his designs in after-dinner speeches to the American public. The idea of Anglo-American community of interest and duty was the topic of his address to the President on the occasion of his presentation.

*Sir:* I need not say that it gives me the sincerest gratification to be the bearer of the credentials which I have just had the honor of placing in your hands. Permit me to say that in coming to your country I do not feel that I come as a foreigner to a foreign land. Our nations speak the same language, spring from the same race and seem especially entrusted by Providence with the same glorious task of illustrating the Anglo-Saxon name by extending the best interests of civilization *through two great divisions of the world*. I have an entire confidence, Sir, that our two governments will act with the most perfect concord in carrying out this great design, and for my own part I unfeignedly assure you that I could not have a duty more congenial to my feel-



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ings than that of cultivating the most intimate and friendly relations between the Queen, my sovereign and that great Republic of which you are the worthy and distinguished President.<sup>1</sup>

In the original form of the speech, that is, as Bulwer had prepared it, or as it had been prepared for him, the words in italics read "through both hemispheres;" in other words, throughout the world. That was too much for a President of the United States to accede to, even in the perfunctory course of a presentation. Fortunately for both parties, a draft of the speech had been submitted to Clayton, in advance, for his approval; and as a consequence the scope of the imaginary Anglo-American crusade was cut down from the territories of the habitable globe to the confines of the two continents of America.

To Bulwer's address the President replied:

I am much pleased to receive from your hands the letter of her Majesty, your Sovereign, which accredits you, as the Envoy, Extraordinary and Minister Plenipotentiary of Great Britain near the Government of the United States, and I cordially welcome you in that high character as a friend.

Beyond the identity of origin, language, and duties, so appropriately alluded to by you, as connecting our respective countries, there is much, Sir, in their present relations calculated to impart unusual interest to your mission. That the best plans for extending the bless-

<sup>1</sup> *Index and Archives*, Dept. of State.

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ings of peace, commerce, and civilization, may be executed by our perfect concord is my most earnest wish; and the confidence you have expressed; that the two nations will act in concert and harmony in *all wise and well directed efforts* for the accomplishment of such objects, is accepted by me in the cordial and sincere spirit in which it has been proposed by you.

I hope, Sir, that your residence in this country may prove as agreeable to you personally as you have given me reason for believing that it will be honorable and advantageous, both to Great Britain and America.<sup>1</sup>

But this cautious reply and Clayton's correction, were lost on the British minister. A few days before he put his signature to the Clayton-Bulwer Treaty, he said, speaking for publication:

. . . The glorious spectacle of two great states, both powerful and flourishing, the one in the prime of youth, the other in the vigor of manhood; two states, the same in origin, in language, and above all, in character, standing side by side, hand in hand, in the van of mankind: the first [foremost states] wherever true glory is to be gained, justice and mercy to be vindicated, commerce, civilization, and religion to be spread. The past hallows our union; the future smiles on it, and Heaven cannot but bless it,—for it is the union of one family and has for its object the benefit of the whole world.<sup>2</sup>

When Bulwer arrived in the United States neither he nor Clayton had instructions for the negotiation of a treaty. But on Clayton's invitation, Bulwer entered into conference with him

<sup>1</sup> *Index and Archives*, Dept. of State.

<sup>2</sup> Speech at Dinner of Maryland Hist. Soc., Balt., Apl. 6, 1850.

## *The Clayton-Bulwer Negotiations.*

on the subject of an interoceanic waterway.<sup>1</sup> They soon found themselves in agreement on the general proposition that one should be constructed without interfering with the *status quo* in Central America, any more than was necessary in its realization and the insurance of its neutrality. The Mosquito question was not to be considered, except to the limited extent determined by these purposes. On the 13th of February, 1850, Sir Henry Bulwer forwarded for Lord Palmerston's criticism the *projet* of a treaty drawn up by himself and Clayton. This document is here presented with the amendments that were made in it prior to its ratification.

### *Text of the Clayton-Bulwer Treaty*

Italics indicate parts replaced by others, and brackets parts omitted. The matter in the right-hand column was substituted for the parts in italics or was inserted in the vacant spaces, in the left-hand column. The two columns, read together, furnish the treaty in its original form, or as projected, and in its final form, or as ratified.

*As projected*<sup>2</sup>.

*Addenda*

#### PREAMBLE

The United States of America and Her Britannic Majesty, being desirous of consoli-

<sup>1</sup> *Memoir of J. M. Clayton*, Comegys, p. 192.

<sup>2</sup> The text of this column is taken from the *Clayton Papers* in

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dating the relations of amity which so happily subsist between them, by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the River San Juan de Nicaragua and either (or both) of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States, and Her Britannic Majesty on the Right Hon. Sir Henry Lytton Bulwer,

a member of Her Majesty's most honorable privy council, Knight commander of the most honorable order of the Bath, and

envoy extraordinary and minister plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said plenipotentiaries having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

the Library of Congress (IX, 1640-1649). It was published without the signatures in *Sen. Ex. Doc. 194, 47 Cong., 1 Sess.*, pp. 64, 65, and with the signatures, in *Brit. and For. State Papers*, vol. 40, pp. 1008 *et seq.* In these two publications the words "or both" in the preamble are not in parentheses,

# The Clayton-Bulwer Negotiations

## ARTICLE I

The governments of

*Great Britain and the United States*

The United States and Great Britain

hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal, agreeing that neither will ever erect or maintain any fortifications commanding the same or in the

vicinity thereof, or occupy

or colonize

*either*

Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; nor will

*Great Britain or the United States assume or exercise any*

dominion over the same;

*or*

or fortify

or

assume or exercise any dominion over

either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing, Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America or of assuming or exercising

nor will the United States or Great Britain

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take advantage of any intimacy, or use any alliance, connection or influence that either may possess with any state or

*people*

government

through [or by] whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the

*subjects or citizens*

citizens or subjects

of the one any rights or advantages in regard to [the] commerce or navigation through the said canal, which shall not be offered on the same terms to the

*subjects or citizens*

citizens or subjects

of the other.

#### ARTICLE II

Vessels of  
*Great Britain or The United States*

The United States or Great Britain

traversing the said canal shall, in case of war between the contracting parties, be exempted from

blockade,

detention, or capture, by either of the belligerents, and this provision shall extend to such a distance from the two ends of the said canal as [it] may hereafter be found expedient to establish.

# The Clayton-Bulwer Negotiations

## ARTICLE III

In order to secure the construction of the said canal, the contracting parties engage that, if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal and their property, used or to be used for that object, shall be protected, from the commencement of

the

said canal to its completion, by the governments of the United States and Great Britain, from unjust detention, confiscation, seizure or any violence

*whatever.*

**whatsoever.**

## ARTICLE IV

The contracting parties will use whatever influence they respectively exercise with any state, [or] states, or

*with any people*

**governments**

possessing or claiming to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such states or

*people*

**governments**

### Chapter III

to facilitate

*its*

construction

by every means in their power.

And furthermore,

*Great Britain and The United States*

agree to use their good offices wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

the

of the said canal

The United States and Great Britain

#### ARTICLE V

The contracting parties further engage that when

*any such*

canal shall have been completed, they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless the governments of the United States and Great Britain, in according their protection to the construction of the

the said

said

canal [which this treaty specifies] and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both governments or either govern-



## The Clayton-Bulwer Negotiations

ment, if both governments or either government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention; either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by

*inflicting*

oppressive exactions

*and*

unreasonable tolls upon passengers,

*ships or*

merchandise,

Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

imposing

or

vessels, goods, wares,

or other articles.

### ARTICLE VI

The contracting parties in this convention engage to invite every [nation], state [or people] with

*whom*

which

both or either have friendly intercourse, to enter into stipu-

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lations with them similar to those which they have entered into with each other, to the end that

*the whole world*

may share in the honor and advantage of having contributed to a work of such general interest and importance

and the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American [nations], states, [or people] as they may deem advisable for the purpose of more effectually carrying out the great design of this convention; namely that of constructing and maintaining the

*proposed*

ship - communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed when requested by the other, in aiding and assisting the negotiation of such treaty stipulations;

all other states

as the canal herein contemplated;

said canal as a

and should any differences arise as to right or property over the territory through which the said canal shall pass, between the states or governments of Central America, and such differences should in any way im-

# The Clayton-Bulwer Negotiations

pede or obstruct the execution of the said canal, the governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

## ARTICLE VII

It being desirable that no time should be unnecessarily lost in commencing

the

*great undertaking herein contemplated,*

the governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention;

and constructing

said canal

and if any persons or company should already have with any state through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract

### Chapter III

neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall, moreover, have made preparations, and expended time, money, and trouble, on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the governments of the United States and Great Britain, and be allowed a year from the date of the exchange of the ratifications of this convention for concluding their arrangements, and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprise, then the governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

#### ARTICLE VIII

The governments of the United States and Great Britain,

*in entering into the present* having not only desired, in en-

## The Clayton-Bulwer Negotiations

convention, have not only desired

to accomplish a particular object, but also to establish a general principle; they [therefore] hereby agree to

take under their consideration any project for a

canal or railway,

*which may be submitted to them, and which may have for its purpose to connect the Atlantic and Pacific, or to shorten and expedite the transit of persons, ships, or merchandise, between the two great oceans; and should either of the two governments deem it to be beneficial to the general interests of commerce and civilization to extend its support, encouragement, or protection to such railway or canal, it will forthwith invite the other of the two governments to be a joint party in affording such protection, support, or encouragement; and will neither request nor accept from any persons, company, or state any advantages or privileges for its own citizens or subjects with respect to such railway or canal which shall not be open for all other governments to obtain for their citizens or subjects upon the same terms as those which are proposed to or accepted by itself.*

tering into this convention,

extend their protection, by treaty stipulations, to any other practicable communications, whether by

across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other state which is willing to grant thereto such protection as the United States engage to afford.

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### ARTICLE IX

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington, the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

J. M. CLAYTON,  
H. L. BULWER.

JOHN M. CLAYTON,  
HENRY LYTTON BULWER.

With the project of the treaty, Bulwer forwarded to Lord Palmerston the following agreement:

. . . . .  
If this project be approved of by the government of her Britannic Majesty and the Government of the United States on or before the tenth of April next (1850), it shall then forthwith be converted into a solemn treaty binding between the two states.

But if, on the contrary, it should not be fully approved of by either or both these governments on or before the 10th of April, 1850, it is then fully agreed, understood and declared by the undersigned that the said project is to be considered as altogether null and void; and that all that has passed relative thereto shall be held as if it had never taken place.

J. M. CLAYTON.  
H. L. BULWER.

## IV

### THE PROTECTORATE UNDER THE CLAYTON-BULWER TREATY

In his letter transmitting the treaty to Palmerston, Sir Henry Bulwer said:

. . . having heard of the very serious illness of Mr. Lawrence and been informed by Mr. Clayton that, if this gentleman recovers, he will not be able to transact public business for a considerable time, I deemed that I stood in one of those positions in which it is necessary for a public agent to take upon himself a certain degree of responsibility for the sake of the public service; and consequently when Mr. Clayton after informing me of Mr. Lawrence's severe indisposition and explaining to me the very critical position in which he himself stood, added that he must either deliver up the whole subject to popular discussion and determination or come to some immediate settlement upon it, I entered with him into a full consideration of the affair, and finally agreed to submit to your Lordship's sanction the enclosed project of convention . . . its object being to exclude all questions of the disputes between Nicaragua and the Mosquitos; but to settle in fact all that it was essential to settle with regard to these disputes as far as the ship communication between the Atlantic and Pacific and the navigation of the River San Juan were concerned.<sup>1</sup>

<sup>1</sup> The Clayton-Bulwer Treaty was thus purely commercial. It was not formed to settle the Mosquito question, but to prevent the Mosquito question being an obstacle to the completion of the American canal. (*Quart. Rev.* Vol. XCIX, 1856, Article by H. L. Bulwer.)

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Thus Bulwer and Clayton agreed to concentrate their attention on the requirements of the canal. The problem of ousting Great Britain from objectionable occupancy in Central America irrespectively of the canal, was to be put off to an indefinite future. The different attitude taken toward this matter by Abbot Lawrence was probably of more weight than the state of Lawrence's health in determining Clayton to transfer the negotiations from London to Washington.

Before the project of the treaty could have reached England its provisions became known in the United States, and Clayton was given reason to believe that the Senate would not approve of his attitude toward the general question of Mosquito sovereignty. On that subject it agreed with Lawrence rather than with Clayton. As a consequence Clayton perforce adopted the view of the Senate, that British influence was to be abolished throughout the Mosquito Coast, and he applied himself to prevailing upon Bulwer to do likewise. This was to propose that Bulwer do the very thing which he was bent on preventing—that he commit himself to failing in his mission. Clayton was insistent. Bulwer was immovable. In vain did Clayton threaten to defeat what he supposed was the common object of the negotiators. Bulwer with an air of injured innocence, protested against Clayton's inconstancy. It ended in Clayton's leaving the Mosquito question unsettled as be-



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tween him and Bulwer, but settled in his own mind to his satisfaction. Great Britain was to retain her protectorate over the Mosquito Coast, but in name only. She was to be the merely nominal or titular protector of the Mosquitos, renouncing all right to the use of force. This was accomplished, he thought, by the provisions, as finally worded, of Article I.<sup>1</sup> Elated with this flattering delusion, he wrote privately to Lawrence:

April 22, 1850.

Sir Henry Lytton Bulwer concluded a treaty with me on the 19th instant, which you will remember, was the anniversary of the Lexington and Concord affair. The treaty is honorable to both countries. It is very like the *projet* I sent to you; but it additionally provides that neither party shall make use of any protection or alliance for the purpose of occupying, fortifying, colonizing, or assuming or exercising any dominion whatsoever, over any part of Central America or the Mosquito Coast, so that our friends over the water can neither occupy, etc. to protect nor protect to occupy etc. You will ask what becomes of the protectorate? I answer "*stat nominis umbra*," it stands the shadow of a name. Use all your good offices to persuade Lord Palmerston to agree to the treaty. My friend Bulwer is evidently somewhat uneasy lest Palmerston should censure him for consenting to so much, but Bulwer could not have possibly made any treaty with me on any better terms for England.<sup>2</sup>

According to Sir Henry Bulwer, "the treaty

<sup>1</sup> For correspondence, etc., on this point see Appendix C.

<sup>2</sup> *Clayton Papers*, IX, 1661.

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left the protection existing, but forbade it to be used for the purpose of dominion." He held that it could be used to protect the Mosquitos in the maintenance of their sovereignty, should it ever be assailed or contested, that the employment of British troops in Central America for that purpose would not constitute either occupation or dominion as understood in the treaty.

American statesmen generally did not agree, either with Sir Henry Bulwer or with Clayton. They understood that Great Britain was required to abandon her protectorate altogether, in name as well as in substance, leaving the Mosquitos to take care of themselves, under the sovereignty of Nicaragua and of Honduras. Both parties to the treaty agreed never to "exercise any dominion over Nicaragua, Costa Rica, *the Mosquito Coast*, or any part of Central America." The United States held that the so-called protectorate of the Mosquito Coast was "dominion." The question then was this: Does a prohibition to exercise dominion prohibit continuing to exercise it; does it require the abandonment of actual dominion? It may be admitted as a general principle that sovereignty or dominion cannot be surrendered by implication, that it cannot be renounced except in express terms. But this principle contemplates *bona fide*, legitimate sovereignty or dominion; it is at least a debatable question whether it applies to such irregular, illegitimate influence

## *The British Protectorate*

as that exercised by Great Britain on the Mosquito Coast, which she did not pretend herself to be sovereignty, which she denied to be dominion, which she called a protectorate.

The political relation of protector and protected is not a new one. It grows out of contract. It implies sovereignty in each party, for when the sovereignty of the lesser merges in that of the greater the peculiar relation ceases.<sup>1</sup>

One reason why the United States would not recognize Mosquito sovereignty was that it involved Indian rights of eminent domain, of land ownership. Great Britain might have a title which extinguished or excluded that of an American Republic, but no American statesman would admit that such title could be held by a tribe of Indians.

As to the Mosquito title, the United States could not possibly recognize that, without abandoning a principle as old as their existence, for you know, we never acknowledge any right in an Indian in any part of America, except a mere right of occupancy, always liable to be extinguished (that's our technical word for it) at the will of the discoverers. We could not recognize such a title in any case without admitting the illegality of the tenure by which we hold all the lands in our country.<sup>2</sup>

Lord Palmerston, while admitting the general doctrine for which the United States contended,

<sup>1</sup> Lawrence to Clayton, April 19, 1850.

<sup>2</sup> Clayton to Lawrence, May 2, 1850.

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held that the case of the Mosquitos was *sui generis* and stood upon its own peculiar circumstances.<sup>1</sup> Clayton took little or no account of this attitude of the British Government. About a year after he had been informed of it he wrote:

Having always regarded an Indian title as a mere right of occupancy, we can never agree that such a title should be treated otherwise than as a thing to be extinguished at the will of the discoverer of the country. Upon the ratification of the treaty Great Britain will no longer have any interest to deny this principle which she has recognized in every case in common with us. "*Stat nominis umbra*," for she can neither occupy, fortify or colonize, nor exercise dominion or control, in any part of the Mosquito Coast or Central America. To attempt to do either of these things after the exchange of ratifications, would inevitably produce a rupture with the United States.<sup>2</sup>

Great Britain's policy in the Mosquito country was really intervention, the essence of which is illegality, even when acceptable to the party in whose behalf it is carried out. But the intervention in this case was a form of dominion.

This government [Mosquito] was not only British in *personnel*, but was administered according to British customs. It was also dependent upon Great Britain for the maintenance of its authority. If that did not amount

<sup>1</sup> Rives to Clayton, Sept. 25, 1849.

<sup>2</sup> Clayton to Squier, May 7, 1850.

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to an occupation with the exercise of dominion, it is difficult to understand what could.<sup>1</sup>

Neither Great Britain nor the United States was to "assume or exercise dominion." What is the meaning of this phrase? If it were "assume *and* exercise dominion" it might be interpreted as a single idea comprehending both the initiation and the maintenance of dominion. But the connective *or* indicates that there are two ideas which are to be distinguished from each other. The natural distinction to be made between assuming dominion and exercising dominion is that assuming means *to begin* and exercising means *to continue*. It would thus seem that continuing to exercise dominion is as explicitly prohibited as beginning to exercise it; that the prohibition applies to existing as well as to impending dominion; that it is meant to be present or immediate, not merely prospective, in its operation. Great Britain held that as regards occupation, dominion,

<sup>1</sup> Travis.

It is alleged that a British consul or agent resides in Mosquito who "may oftentimes be called upon to give his opinion or advice to the Mosquito Government." But it is notorious and from the degraded character of the Indians it cannot be otherwise, that the Mosquito Government is exclusively the British Government exercised through the agency of this Consul residing in Mosquito. It is through him that the British Government, in the name of this mere shadow of a king, captured the seaports of his neighbors by the employment of British forces alone, and exercises dominion over the entire so-called Mosquito Coast. (Buchanan to Clarendon, July 22, 1854.)

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fortification, colonization, etc., the treaty was prospective, having no application to the state of affairs existing at the time of its negotiation. She would not admit that it debarred her from such military operation as might be necessary to preserve the *status quo*. The United States persistently refused to recognize the sovereignty of the Mosquitos and insisted on the actuality and illegality of British dominion over the Mosquito country, but as already stated, did not bring Great Britain to agree with it on either of these points.

On the 22nd of April, 1850, three days after the treaty was signed, it was sent by President Taylor to the Senate for approval. Here was an occasion for the President to state that it would cause the withdrawal of Great Britain from Central America, but he did not make that statement; and the guarded language which he used indicated that he could not make it. He said:

. . . I found Great Britain in possession of nearly half of Central America, as the ally and protector of the Mosquito King. It has been my object, in negotiating this treaty, not only to secure the passage across the isthmus . . . but to maintain the independence and sovereignty of all Central American republics. The Senate will judge how far these objects have been effected.

Three years later our Secretary of State wrote to the President:

. . . the relations of Great Britain to Mosquito and

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the Mosquito Indians, over whom she claims to have exercised a protectorate for a long course of years, remains under this [Clayton-Bulwer] treaty somewhat indeterminate.<sup>1</sup>

About a week after the signing of the treaty Sir Henry Bulwer explained in a dispatch to Palmerston the difference between the original draft forwarded on the 3rd of February, and the treaty as signed. He said:

As the case now stands it is clearly understood that Her Majesty's Government holds by its own opinions already expressed as to Mosquito, and that the United States does not depart from its opinions also already expressed as to the same subject; but the main question of the canal being settled on an amicable basis, and the future relations of the United States and Great Britain being regulated in all other parts of Central America, the discussion of this difference, which has lost its great practical importance, is avoided in an arrangement meant to be as much as possible of a friendly character.<sup>2</sup>

The British representative in Central America wrote to the Minister of Foreign Affairs of Nicaragua:

This [Clayton-Bulwer] treaty declares that North America recognizes the existence of Mosquito, acknowledging it to be as perfectly distinct a state or country

<sup>1</sup> Everett to Fillmore, Feb. 16, 1853.

<sup>2</sup> Bulwer to Palmerston, April 28, 1850.

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with respect to Nicaragua, as Costa Rica or any other portion of Central America.<sup>1</sup>

Hardly was the Clayton-Bulwer Treaty ratified when trading with San Juan brought the United States into conflict with Great Britain over the question of local jurisdiction.

On the 21st of November, 1850, the American steamer *Prometheus*, with many passengers on board, was fired upon while going out of the port, by the British brig-of-war *Express*, to force it to pay certain port charges to his Mosquito Majesty. The British Government recognized that this was going beyond the function of protection; that it was exercising dominion. It consequently disavowed the act. But this did not prevent a recurrence of friction between United States citizens and the Mosquito authorities. On the 10th of June, 1854, the place was bombarded by a United States war vessel and reduced to ruins as a punishment for alleged affronts on the part of the San Juan populace and authorities to a United States minister. This ruthless chastisement was probably intended to be a blow at the prestige of Great Britain as the protector of Mosquito sovereignty. Such a motive may be read between the lines of a reference to "Greytown" which was made by President Pierce in his next message to Congress:

<sup>1</sup> Chatfield to Orosco, Sept. 28, 1850.



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“It was in fact a marauding establishment, too dangerous to be disregarded and too guilty to pass unpunished, and yet incapable of being treated in another way than as a piratical resort of outlaws or a camp of savages depredating on emigrant trains or caravans and the frontier settlements of civilized states.”

The punishment was perhaps unnecessarily severe. It brought loss and suffering upon innocent people, including a number of citizens of the United States, and left the general situation unchanged. Great Britain did not relinquish her control of the Mosquito Coast until 1859, when she transferred it in part to Honduras. The remainder, including “Greytown or San Juan del Norte,” she surrendered to Nicaragua by the Treaty of Managua in 1860. By this treaty San Juan was regularly constituted and declared a free port under the sovereign authority of the Republic of Nicaragua.<sup>1</sup>

It was stipulated that a district within the territory ceded to Nicaragua should be assigned to the Mosquito Indians. The limits of this reservation were defined in the treaty and gave it an area about one-fourth that of the former dominion of the nominal King of the Mosquitos (Map 2).

The treaty secured to the Mosquitos the right

<sup>1</sup> For text of this treaty and the one with Honduras see *Sen. Ex. Doc. 194*, 47th Cong., 1st Sess., pp. 148-154.

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of self-government under the sovereignty of Nicaragua. It required the latter to pay to the Mosquitos 50,000 dollars in the course of ten years and prohibited Nicaragua from ever ceding the Mosquito district "to any foreign person or State." The treaty with Honduras bound that State to the same payment as Nicaragua. The cession was thus an imperfect one; it subjected Nicaragua to conditions inconsistent with sovereign control and possession of the district. It might have been expected that failures to observe them would lead to intervention on the part of Great Britain and so to trouble with the United States. But this contingency does not seem to have been anticipated. The treaty of Managua was considered by the Government and people of the United States a satisfactory solution of the Mosquito difficulty, until events opened their eyes to its inefficacy. Nineteen years after its conclusion Nicaragua had paid but \$20,000 and Honduras but \$25,000 of the \$50,000 which each State had engaged to pay within ten years. It does not appear that any more of this sum was ever paid. A disagreement between Great Britain and the Mosquitos on one side, and Nicaragua on the other, as to the interpretation of the treaty, was referred to the Emperor of Austria for arbitration, and decided by him in 1881. A few years later, the American Secretary of State wrote to the American minister at London:

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To this agreement of arbitration the Government of the United States was not a party, and it is not bound by the award of the arbitrator, nor committed in any way to an admission of the right of Great Britain to interfere in disputes between the Republic of Nicaragua and the Indians living within her borders. If it had been supposed by the United States that the Treaty of Managua was understood by the Government of Great Britain to give that country a right of influence, direction, or control over the destinies of the Mosquito territory as against the State of Nicaragua, that convention, far from being hailed by this government as a solution and termination of the disputes concerning the British protectorate over the Mosquito Indians, would have been regarded as a serious obstacle to any other settlement.<sup>1</sup>

In 1894, Great Britain again intervened between the Mosquito Indians and Nicaragua, and by implication invited the United States to join with it in settling the difference. The United States declined, suggesting that Nicaragua and her Indians be left to settle their differences between themselves, and remarked that the United States, in its dealings with that part of America, recognized and would recognize no government but that of Nicaragua.<sup>2</sup> As between Great Britain and the United States, the Mosquito question was practically where it was when the Clayton-Bulwer Treaty was signed. It would probably have led to war had it not been permanently disposed of by

<sup>1</sup> Bayard to Phelps, Nov. 23, 1888.

<sup>2</sup> Gresham to Bayard, April 30, and July 19, 1894.

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the action of the Mosquito Indians themselves. By the Treaty of Managua, the Mosquitos were privileged to surrender their rights as a separate people and be merged in the population of Nicaragua, on condition of their submitting to the laws and constitution of that State. Availing themselves of this privilege, they applied to the Nicaraguan Government for incorporation as a part of the republic. Their application was granted, and their district was accordingly converted into the Province of *Zelaya*. A convention, representing the few hundred souls that were left of the Mosquito people, signalized the event by passing the following resolutions:

Whereas the change which took place on the 12th of February of the present year (1894) was due to the efforts of the Nicaraguan authorities to endeavor to free us from the slavery in which we were:

Whereas we have agreed wholly to submit to the laws and authorities of Nicaragua for the purpose of forming part of their political and administrative organization:

Whereas the lack of a respectable and legitimate government is always the cause of calamity to a people, in which condition we have been for a long time:

Whereas one of the reasons for the backward condition in which we live doubtless was the improper use of the revenues of the Mosquito territory, which were employed for purposes which had nothing to do with good administrative order:

. . . . .  
Article 1. The constitution of Nicaragua and its laws

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shall be obeyed by the Mosquito people who shall be under the protection of the flag of the Republic.

. . . . .

The projected Nicaraguan Canal, for reasons which do not concern us, was never built, nor was the construction of it even begun. Until the negotiation of the Hay-Pauncefote Treaty in 1901, the Clayton-Bulwer Treaty prevented the United States from acquiring a coaling station or other dependency in Central America, while not removing Great Britain from her positions in that region. This was not neutralization. The Clayton-Bulwer Treaty should have provided for, or permitted, the expansion of the United States to something like an equivalent to the territory held in Central America by Great Britain. As it was it virtually reversed the Monroe Doctrine, establishing it against the United States rather than against Europe.<sup>1</sup> At the same time it flew in the face of Washington's advice against entangling alliances with European nations. It would be wrong, however, to think that Great Britain had no other object in holding on, as she did, to the Mosquito protectorate than to thwart the United States. This mistake was at the bottom of Clayton's policy of disarming Great Britain's protectorate. Finding herself debarred by the treaty

<sup>1</sup> Buchanan to McClernand, April 2, 1850 (*Am. Hist. Rev.*, v. 99-101.)

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from using the Mosquito Coast as a base for military aggression, she would have no use for it at all, she would not only renounce or relinquish her protectorate over it, but would withdraw from it in every sense.

In diplomacy as in war it is hazardous to count on an opponent's doing what one wants him to do; to base a plan on conjectures as to his attitude or intentions. Clayton's diplomacy failed because he misjudged the motives of the British cabinet. Great Britain's interest in the Mosquitos was not all imperial selfishness. There was in it an element of sympathy for a helpless race exposed to the cruel oppression which Spanish conquerors and their descendants visited upon aborigines, especially on those who refused, as the Mosquitos did, to accept the Roman Catholic faith. It included also a becoming gratitude to those people for the shelter, assistance, and support which for over two hundred years they had afforded to British buccaneers, smugglers, squatters, and invaders. In 1780 the Mosquitos allied themselves with a British expedition up the San Juan River, in which Horatio Nelson, the future admiral, commanded a detachment of marines, and by their devotion saved it from perishing to a man. Such services Great Britain felt in honor bound to hold in appreciative remembrance. Her conduct was actuated by the three motives of policy, humanity,

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and honor. Clayton reckoned only with the first.

In explanation of his diplomacy he said a few years later:

Whenever the attempt has been made to assert the Monroe Doctrine in either branch of Congress it has failed. . . . The reason for which I was particularly anxious to make the [Clayton-Bulwer] treaty was because I was conscious of the fact that Congress would not assert the Monroe Doctrine, and that we must either give up the country to the British or obtain a treaty binding Great Britain to abandon it. We have the treaty.<sup>1</sup>

If we had not had the treaty, we should have given up the country to the British in the same way and perhaps to no greater extent than we gave it up having the treaty, except that without the treaty we should have been free to take some of it ourselves. The treaty did not take any country from Great Britain. It prevented her from taking more by preventing us from taking any. It asserted the Monroe Doctrine by repudiating it.

The question whether Great Britain violated the Clayton-Bulwer Treaty by continuing, after its ratification, to maintain her *quasi* protectorate over the Mosquito Coast, depends as already stated, upon whether the provisions as to exercising dominion, etc., were purely prospective or both present and prospective. They seem to have

<sup>1</sup> Senate Speech, Dec. 31, 1855.

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been both present and prospective, but on this point there may be room for an honest doubt. Moreover, it is only just to Great Britain to say that she offered to submit the question to arbitration and the United States would not consent to it.



## V

### THE CLAYTON-BULWER TREATY (CONCLUDED) BELIZE, OR BRITISH HONDURAS. THE BAY ISLANDS

#### *Belize, or British Honduras*

The country now known as British Honduras was discovered by Columbus in 1502.<sup>1</sup> The first recorded mention of a settlement at the place now occupied by its capital, Belize, was made in 1638, when a few mariners and adventurers established themselves there.<sup>2</sup> In 1696 a horde of English pirates took possession of the present Island of Carmen in the Laguno de Términos. Though driven from it by the Spaniards in 1717, they retained a foothold on the coast and penetrated to the vicinity of the Rio Hondo. The *rancheria* which they formed took the name of Walix or Belice, after their captain whose name was Wallace. They were dislodged by the Spanish governor in 1733 but immediately returned, retook the place, and remained thus established upon

<sup>1</sup> *An account of the British Settlement of Honduras* by Captain Henderson.

<sup>2</sup> *Bulletin of Am. Geog. Soc.*, XXXII, No. 4, 1900, p. 331 *et seq.*

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what was then part of the Spanish-American province of Mexico.<sup>1</sup> The British settlement of Belize was recognized by Spain in the treaty concluded with Great Britain in 1763, as an establishment for "cutting, loading, and carrying away logwood." In this treaty it was provided that all fortifications which British subjects might have erected "in the Bay of Honduras and other places of the Territory of Spain in that part of the world" should be demolished, within a period of four months; but prescribed no limits, either as to territory or as to governmental power, for the settlements. The friction and controversy that came from this omission it was sought to obviate by the treaty of 1783. In this pact the settlement was defined by metes and bounds. The northern line was described as the Rio Hondo and the southern as the Rio Belize, but these limits were not respected by the settlers. Rather than fight over their infraction, Spain agreed to their extension. By the treaty of 1786 the settlement was enlarged by expansion southward to the Rio Sibun, the boundary between Mexico and Guatemala.<sup>2</sup> The occupation of the settlers was given greater scope. From cutting wood for dyeing it was extended to "cutting all other wood, without

<sup>1</sup> *Diccionario-enciclopédico hispano-americano* by Montauer and Simon.

<sup>2</sup> The boundary was at this time and for years afterwards undefined, but seems to have been eventually defined by a preponderance of authority, as the line of the Sibun,

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even excepting mahogany, as well as gathering all the fruits of the earth, purely natural and uncultivated." According to the eighth article of the treaty, the settlers were to husband the wood so as to make the supply inexhaustible or, failing to do this, they were, upon its exhaustion, to vacate the settlement or to supply themselves by purchase from inhabitants of the surrounding country. The treaty prohibited the establishment of plantations or factories or any form of government, except "such regulations as their Britannic and Catholic Majesties might see fit to establish for the maintenance of peace and order among their respective subjects." The sovereignty of the country was expressly reserved to Spain.

By 1821, when the Central American States achieved their independence, the settlers in the Belize, having failed to husband the wood as contemplated in the treaty of 1786, had exhausted the supply. Instead of applying for a new grant or vacating the settlement or supplying themselves by purchase from the surrounding country, as required by the treaty, they spread across the Sibun, establishing themselves and plying their trade, as far south as the Rio Sarstoon in Guatemala.

The rights of Spain in Mexico descended, through the revolution of that dependency, upon the independent State which Mexico became. In

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1826 England acquired by treaty with Mexico the same rights from that republic as she had previously acquired from Spain, and no more.<sup>1</sup> This treaty (1826) covered her Belize settlement from the Rio Hondo to the Rio Sibun; in other words her legitimate settlement, which was in Mexico. It did not affect her settlement from the Sibun to the Sarstoon; in other words her squatter settlement, which lay in Guatemala.

On the 14th of August, 1834, the Government of Guatemala granted a charter to a British corporation: "The Eastern Coast of Central America Commercial and Agricultural Company," for the purpose of colonization. The land assigned to it was the department of Vera Paz, part of which constituted the region between the Sibun and the Sarstoon invaded by the settlers from Belize. When the authorities of Belize learned of this grant they declared that this region was within their jurisdiction as their property and they refused to give any of it up to the claimants under the Guatemala grant.

<sup>1</sup> J. M. Clayton, Sen. Speech, Jan. 16, 1854. About two years later our secretary of state wrote as follows: "It is the indisputable fact that England possesses no other *treaty* rights at the Belize, except the usufruct conceded by Spain, and which as late as the year 1826, the British government deemed it important to have confirmed by England [*sic*] by the Mexican republic, as the presumed sovereign at that time, of the country in which the settlement of the Belize exists.

"It is understood that Guatemala contests the claim of the Mexican republic in this respect; and it may be that the precise limits of the two republics on that side are undetermined."

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On the 16th of September, 1834, they formally declared the coasts and lands which they had occupied since 1821 to be within their jurisdiction and the following November sent a petition to London asking that the settlement be declared a regular British colony.<sup>1</sup> The British company applied to the home government for information as to the boundaries claimed by it for the Belize or as to where, in the Department of Vera Paz, the company might "found its settlement without touching on possessions claimed by the Crown of Great Britain."<sup>2</sup> It was answered in the following terms:

DOWNING STREET, 23 November, 1836.

I am directed by the Secretary of State to acknowledge the receipt of your letter of the 17th ultimo on behalf of the Eastern Coast of Central America Company, inquiring "what are the boundaries claimed by His Majesty's Government for British Honduras (or Belise)?" and I am to acquaint you in answer that the territory claimed by the British Crown as belonging to the British settlements in the Bay of Honduras, extends from the River Hondo on the north to the River Sarstoon on the south, and as far west as Garbott's Falls on the River Belise, and a line on the same parallel to strike on the River Hondo on the north and the River Sarstoon on the south. The British Crown claims also the waters, islands and keys, lying between the coast,

<sup>1</sup> United States Docs., Ser. No. 660, Doc. 27, p. 4. (Sen. Doc. 27, 32 Cong., 2 Sess. p. 7.)

<sup>2</sup> Leonard S. Coxe, Secretary, to Lord Glenelg, Colon. Off., Nov. 17, 1836.

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above defined, and the meridian of the easternmost point of Light-House Reef.

This was but a partial concession to the claims of the settlers. It gave them the area that they coveted and seemed to make them owners of the territory, but it made no pretention to sovereignty. In November, 1840, a new superintendent, MacDonald, proclaimed the law of England to be the law of the "settlement or colony of British Honduras" and sent a new petition to the home government which was not granted. In 1846 the settlers asked that goods from Belize be admitted at British ports free from the discriminating duty charged upon foreign goods. But the Colonial Office replied that the sovereignty of Belize territory rested, not in Great Britain, but in Spain, under the treaties of 1783 and 1786.<sup>1</sup> The sovereignty passed to Great Britain in 1859, when in a treaty with Guatemala, "the boundary between the Republic and the British settlement and possessions in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time" is described as extending from the Mexican frontier Hondo River on the north, to the Sarstoon River, on the south.<sup>2</sup> On the 12th of May,

<sup>1</sup> *Anglo-American Isthmian Diplomacy* by M. W. Williams, p. 36.

<sup>2</sup> The text of this treaty is given in Sen. Ex. Doc. 194, 47 Cong., 1 Sess., p. 146.

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1862, British Honduras, with the boundary defined in this treaty "was declared to be a colony, the governor of which was to be the governor of Jamaica, locally represented by a lieutenant-governor, who took the place of superintendent." At the end of 1870, in answer to a petition by the legislative assembly, the principle of popular representation was abolished and British Honduras became a crown colony; and finally, in 1884, its connection with Jamaica, which had for sometime been nominal, was completely severed, and it was given a governor under the immediate control of the colonial office.<sup>1</sup> By these acts a settlement under the sovereignty, first of Spain and then of an American republic, and numbering about 2500 square miles, was converted into a British possession with an area of 8600 square miles, a little larger than that of Massachusetts (Map 3). While the Kingdom of the Mosquitos was diminished by its transfer as a district to Nicaragua, the settlement of Belize was enlarged by its establishment and incorporation as a colony in the British Empire.

There are Americans as well as Britons, learned in so-called international law, who allege that the colonization of Belize was not a violation of the Clayton-Bulwer Treaty. They contend that the

<sup>1</sup> *Historical Geography of the British Colonies* by C. P. Lucas, p. 309, 1890.

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treaty was not intended to apply to this territory. How was it understood in this respect by the contracting parties? The Clayton-Bulwer Treaty was approved by the Senate on the 22nd of May, 1850, and ratified by President Taylor on the following day. It was then sent to England for ratification by Queen Victoria. Apprehension was excited in England lest British Honduras should be embraced in the treaty. The natural and surer way to guard against this was to make a reservation to the contrary in the ratification. This was not done. The treaty was ratified without reservation on the 11th of June, 1850, but a reservation was to be attached to the final act of negotiation, to the exchange of the ratifications. On the 28th of June, Bulwer was informed that the President had ratified the treaty and that Clayton was prepared to exchange the ratifications. On the following day he conveyed to Clayton the reservation in the form of the following declaration in writing:

In proceeding to the exchange of ratifications of the convention signed at Washington on the 19th of April, 1850, between her Britannic Majesty and the United States of America, relative to the establishment of a communication by ship canal between the Atlantic and Pacific Oceans, the undersigned, her Britannic Majesty's plenipotentiary, has received her Majesty's instructions to declare that her Majesty does not understand the engagements to that convention to apply to her



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Majesty's settlement at Honduras [British Honduras] or to its dependencies. Her Majesty's ratification of the said convention is exchanged under the explicit declaration above mentioned.

Done at Washington the....day of....., 1850.

H. L. BULWER.

The ratifications were not exchanged until several days after this. Belize is here referred to as "Her Majesty's settlement at Honduras." No pretention is made to its being under British sovereignty, "its dependencies" are not described nor its boundaries specified. This declaration had been sent to Sir Henry Bulwer from London. In the letter of transmittal, Lord Palmerston said:

I do not anticipate that the Government of the United States will raise any objection to receiving and assenting to that declaration, but if they should decline to receive and assent to it, you will not proceed to the exchange of the ratifications until you shall receive the further instructions of her Majesty's Government.<sup>1</sup>

Mr. Clayton did not decline to receive the declaration, but he did decline to assent to it. Before taking this action he consulted with Senator W. R. King, chairman of the committee on foreign relations of the Senate:

*Clayton to King, July 4, 1850.* I am this morning writing to Sir. H. L. Bulwer, and while about to decline altering the treaty at the time of exchanging ratifica-

<sup>1</sup> Palmerston to Bulwer, June 14, 1850.

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tions, I wish to leave no room for a charge of duplicity against our government, such as that we now pretend that Central America in the treaty includes British Honduras. I shall therefore say to him in effect that such construction was not in the contemplation of the negotiators or the Senate at the time of the confirmation. May I have your permission to add that the true understanding was explained by you as chairman of [the committee on] foreign relations, to the Senate, before the vote was taken on the treaty? I think it due to frankness on our part.

*King to Clayton, July 4, 1850.* The Senate perfectly understood that the treaty did not include British Honduras. Frankness becomes our government, but you should be careful not to use any expression which would seem to recognize the right of England to any portion of [British] Honduras.<sup>1</sup>

On the strength of the latter communication Mr. Clayton addressed to Sir Henry Bulwer the following counter-declaration:

DEPARTMENT OF STATE, WASHINGTON,  
July 4, 1850.

*Sir:*

I have received the declaration you were instructed by your government to make to me respecting Honduras and its dependencies, a copy of which is hereto subjoined.

The language of Article 1 of the Convention concluded on the 19th day of April last, between the United States and Great Britain, describing the country not to be occupied, etc., by either of the parties, was as you know, twice approved by your Government, and it was neither

<sup>1</sup> *Daily National Intelligencer*, Jan. 8, 1853.

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understood by them, nor by either of us, the negotiators, to include the British settlement in Honduras (commonly called British Honduras, as distinct from the State of Honduras), nor the small islands in the neighborhood of that settlement, which are known as its dependencies.<sup>1</sup> To this settlement and these islands the treaty we negotiated was not intended by either of us to apply. The title to them it is now and has been my intention throughout the whole negotiation, to leave as the treaty leaves it, without denying, affirming, or in any way meddling with the same, just as it stood previously.

The chairman of the Committee on Foreign Relations of the Senate, the Hon. William R. King, informs me that "the Senate perfectly understood that the treaty did not include British Honduras." It was understood to apply to and does include, all the Central American States of Guatemala, Honduras, San Salvador, Nicaragua, and Costa Rica, with their just limits and proper dependencies. The difficulty that now arises seems to spring from the use in our convention of the term "Central America," which we adopted because Viscount Palmerston had assented to it and used it as the proper term, we naturally supposing that, on this account, it would be satisfactory to your government; but if your government now intends to delay the exchange of ratifications until we shall have fixed the precise limit of Central America, we must defer further action until we have further information on both sides, to which at present we have no means of resort, and which it is certain we could not obtain before the term fixed for ex-

<sup>1</sup> British Honduras was never included in the state of Honduras ". . . it is certain that the appellation of 'Honduras' commonly applied in England to the settlement of the Belize, is a misnomer, originating perhaps in local projects of aggrandizement." (Marcy to Dallas, July 26, 1856).

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changing the ratifications would expire.<sup>1</sup> It is not to be imagined that such is the object of your government; for not only would this cause delay, but absolutely defeat the convention.

Of course no alteration could be made in the convention, as it now stands, without referring the same to the Senate; and I do not understand you as having authority to propose any alteration. But on some future occasion, a conventional article, clearly stating what are the limits of Central America, might become advisable.<sup>2</sup>

In this communication, Mr. Clayton says in substance that the treaty does not apply to British Honduras, and that it does apply to it, if that settlement is included in Central America; and that the question as to how much, if any, of it is in Central America is to be left unsettled subject to future negotiation; he says, in other words, that the treaty does not apply to the settlement in question and that it may apply to it. He recognizes the settlement as a fact, but does not recognize any title in it. For all he says, the settlement may be wholly a trespass on one or more Central American States. He admits that it is outside of the treaty, so far and so far only, as it is outside of Central America. The sequel to the foregoing correspondence he describes in the following statements which he endorsed on his copy of the declaration of Sir Henry Bulwer:

<sup>1</sup> The exchange of ratification of the Clayton-Bulwer Treaty was to take place within six months of the date of signing, or by the 19th of October, 1850.

<sup>2</sup> *Sen. Ex. Doc. 12*, 32 Cong., 2 Sess., pp. 2, 3.

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### MEMORANDUM

DEPARTMENT OF STATE,  
Washington, July 5, 1850.

The within declaration of Sir H. L. Bulwer was received by me on the 29th day of June, 1850. In reply, I wrote to him my note of the 4th July, acknowledging that I understood British Honduras was not embraced in the treaty of the 19th April last, but at the same time, carefully declining to affirm or deny the British title in their settlement or its alleged dependencies. After signing my note last night, I delivered it to Sir Henry, and we immediately proceeded, without any further or other action, to exchange the ratifications of said treaty. The blank in the declaration was never filled up.<sup>1</sup> The consent of the Senate to the declaration was not required<sup>2</sup> and the treaty was ratified as it stood when it was made.

JOHN M. CLAYTON.

P. S. The rights of no Central American state has been compromised by the treaty or by any part of the negotiation.

Sir Henry understood, when he and Mr. Clayton exchanged ratifications, that the treaty, if it did not include, did not exclude, the settlement of

<sup>1</sup> The blanks were filled up subsequently, to read "29th" and "June."

<sup>2</sup> When Sir Henry Bulwer insisted that the treaty should include what he said were certain islands and dependencies of Belize, adjacent to Honduras [Bay Islands] Mr. Clayton told him substantially, "If you are not satisfied with the treaty as it is and with such explanations as we have made between ourselves, I must submit it to the Senate and you must take the consequences." Sir Henry Bulwer declined, and it was not sent to the Senate in that way. (Senator Butler, *Cong. Globe*, Feb. 20, 1856, p. 469.)

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British Honduras and "its dependencies." By exchanging ratifications under this condition he violated the instructions of his government. It seems probable that he had never read the latter or had forgotten them until he came to prepare his report. However this may be, he knew that Clayton could not be made to accept, as received before the exchange or, for that matter, after it, any communication modifying the treaty in any respect.<sup>1</sup> He had either to confess his fault to his government or to conceal it by falsifying his report. Confession meant the ruin of his career as a diplomat. Falsification was a forlorn hope, but might save him. He took his chances on the latter, and on the 5th of July wrote, under date of the 4th, as to Mr. Clayton:

BRITISH LEGATION,  
July 4th, 1850.

*Sir:*

I understand the purport of your answer to the declaration dated the 29th of June, which I was instructed to make to you on behalf of her Majesty's Government, to be that you do not deem yourself called upon to mark out at this time the exact limits of Her Majesty's settlement at Honduras, nor of the different Central American States, nor to define what are or what are not the dependencies of the said settlement; but that you fully

<sup>1</sup> I also denied his authority or power even to propose any alteration [in the treaty]; and he made no attempt to assert that he had such a power. (J. M. Clayton, Senate speech, Jan. 12, 1854, *Append., Cong. Globe*, XXXI, 91). See also Clayton's counter-declaration, July 4, 1850, *ante*.

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recognize that it was not the intention of our negotiation to embrace in the treaty of the 19th of April, whatever is her Majesty's settlement at Honduras, nor whatever are the dependencies of that settlement, and that Her Majesty's title thereto subsequent to the said treaty will remain just as it was prior to that treaty, without undergoing any alteration whatever in consequence thereof.

It was not the intention of Her Majesty's government to make the declaration I submitted to you more than a simple affirmation of this fact, and consequently, I deem myself now authorized to exchange Her Majesty's ratification of the treaty of the 19th April for that of the President of the United States. . . .

I wait, etc.

H. L. BULWER.<sup>1</sup>

Diplomatists are chary of expression. They are especially backward about committing themselves to writing. This formal communication of the British negotiator would not have been made had the question to which it relates been settled before. It is conclusive evidence that Clayton's reply to the British declaration was not satisfactory to Bulwer; that it was not an acquiescence in Bulwer's construction of the treaty. This last word from Bulwer shows the purpose of reading into Clayton's language something that was not there. It refers to "Her Majesty's title" to British Honduras as if to a credential the scope of which might be uncertain, but the validity of which, so far as it went, was unquestionable. Mr.

<sup>1</sup> Index and Arch., Dept. of State.

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Clayton had not questioned this alleged title, but neither had he given it any recognition. His language indicates that neither Mr. King nor the Senate recognized any British title in British Honduras, whether within or without Central America.

Mr. Clayton had clinched the matter by stating in substance that no other meaning than the one that he had indicated in his counter-declaration could be given to the treaty without the concurrence of the Senate. But all this was ignored by her Majesty's plenipotentiary and has been ignored ever since, not only by the British Government, but also by American historians. According to both, generally speaking, the negotiators agreed unreservedly to consider the provisions regarding occupation, fortification, dominion, etc., as not applying to any part of British Honduras.

To return to the narrative. Having misconstrued Clayton's language so as to give to the treaty the meaning that he wanted it to have, Sir Henry coolly proposed in his bogus letter of the 4th, that the negotiations, which were already formally concluded, be brought to a conclusion. In some way that is past finding out, this communication was smuggled into the archives of our Department of State where it now reposes. It does not bear the usual office mark or any other notation giving date of receipt. A copy of it was



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forwarded by its writer to the British foreign office, where of course it gave the false impression that it was part of the understanding on which the treaty was based.<sup>1</sup> If it was ever seen by Mr. Clayton, it was only years after the conclusion of the treaty.

The spurious document was alluded to in an extract-memorandum of Sir Henry Bulwer's which he sent privately to Daniel Webster on the 17th of August, 1850, Webster having succeeded Clayton as Secretary of State. After referring to Bulwer's declaration and Clayton's counter-declaration, he says:

Sir H. Bulwer's answer states what the intentions of H. M.'s Gov. really were and accepts Mr. Clayton's assent to the declaration he [Bulwer] was instructed to make, as satisfactory.<sup>2</sup>

It was reproduced in full by Sir Henry Bulwer

<sup>1</sup> Letter of transmittal:

*Bulwer to Palmerston*

Washington, July 8, 1850.

*My Lord:*

I have the honor to enclose to your Lordship the correspondence which passed between Mr. Clayton and me, after delivering the declaration inclosed in your Lordship's despatch of the 8th ultimo, respecting Her Majesty's settlement at Honduras and its dependencies.

Your Lordship will perceive that the Secretary of State fully assents to the fact that the rights of her Majesty over the British settlement at Honduras and its dependencies remain untouched by the convention of the 19th April. . . .

<sup>2</sup> Index and Arch., Dept. of State.

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in an article which he contributed in 1856 to the *Edinburgh Review*.<sup>1</sup> It appeared also the same year in an article published in the *Quarterly Review*<sup>2</sup> which was attributed to Bulwer. In these papers one reads:

It was on this note of Sir H. Bulwer and not on the preceding note of Mr. Clayton, that the subject closed.—(*Edinburgh Review*.)

On these words [of Sir Henry Bulwer] without a single demur, Mr. Clayton exchanges the ratifications with Sir Henry Bulwer and on this last letter [Sir Henry's]—not on the previous one [Clayton's] with its verbal qualification—is the treaty thus based, signed and completed.—(*Quarterly Review*.)

Let us recall here what Clayton, in his endorsement on Sir Henry's original declaration, said with reference to his own counter-declaration: "I delivered it to Sir Henry, and we immediately proceeded without any further action to exchange the ratifications of said treaty." If corroboration of this positive and explicit statement be necessary, it may be got from the following letters, which so far as known, have never before been published:

*Clayton to Marcy, May 28, 1856*

"... My attention has been arrested by a document published on the 64th page [of British Blue

<sup>1</sup> Vol. CIV, p. 267.

<sup>2</sup> Vol. XCIX. *The Disputes with America*.

## *British Honduras*

Book 'laid before Parliament recently']<sup>1</sup> purporting to be a letter addressed to me by Sir Henry L. Bulwer dated 'July 4, 1850.'

"I deem it my duty to inform you without delay that no such letter was ever received by me from him. It purports to be a reply to my counter-declaration or letter to him of the same date. I do not stop to consider whether it could be of any effect to change the spirit or meaning of my reply to him of that date, but I assert with perfect confidence that from my own knowledge no such letter was ever received by me from him. I know that he was distinctly informed when the ratifications of the treaty of the 19th of April, 1850, were exchanged, that he could not be permitted to reply to my counter-declaration, and that I would not exchange, if he attempted it.

"It is not possible that I can be deceived or mistaken on this subject. The memory of the facts is as fresh in my mind as it was on the morning of the 5th of July, immediately after the exchange . . . I never can forget my fixed and unalterable purpose at that time to exchange on no letter he could write in reply to mine of the 4th of July to him.

"The exchange of the ratification occupied us on the day (4th of July, 1850) and nearly all night after it. It took place in fact about the break of

<sup>1</sup> *Accounts and Papers, State Papers, LX.*

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day of the 5th of July. Our difficulty came in the adjustment of my counter-declaration in reply to his declaration. We disputed about its phraseology. It is well known to others that, when informed that the British declaration was to be made before the exchange, I refused to exchange at all until he agreed to receive my reply which effectually obviated the objections, otherwise insuperable, which were entertained on the part of our government. Of this the public has been long fully apprised by the letter of the Hon. Reverdy Johnson, attorney-general of the United States at the time of the exchange, which letter is filed and published among the documents of the Senate.<sup>1</sup>

“The only person present during the exchange

<sup>1</sup> Reverdy Johnson to Clayton, December 30, 1853.

“ . . . I assisted, by your request, in the arrangement of the phraseology of the counter-declaration, dated the fourth day of July, 1850, to Sir Henry L. Bulwer’s declaration of the 29th of June. . . . the exchange of the ratifications on that counter-declaration was, on the part of the British minister, a complete waiver of every objection that could be taken to any statement contained in it.

“In point of law, the declarations of the negotiators, not submitted to the Senate, were of no validity and could not affect the treaty. Both understood that. This government had decided that question in the case of the Mexican protocol, and the British Government was informed of their decision. The very power to exchange ratifications gave them the same information, and it is impossible that the British minister could have been deceived on that subject.” (*Append. Cong. Globe*, Jan. 28, 1856, p. 75).

For the full powers of the plenipotentiaries, see Appendix D. That of Mr. Clayton was “to conclude and sign a convention touching the premises, for my [President Taylor’s] ratification, with the advice and consent of the Senate of the United States, if such advice and consent be given.”

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was the Librarian of the State Department, now the attorney-general of the State of Delaware, George P. Fisher, Esquire—the same gentleman who was appointed by the President commissioner to settle and adjust the claims on Brazil. Mr. Fisher is a man of high standing and unquestioned character as for morality and honor. He was present during the whole interview with Sir Henry when the exchange took place and received the treaty and all the correspondence at the time and filed it by my orders in the State Department. He cannot fail to recollect a fact so important as that no such letter as Sir Henry's of the 4th of July was received by me before the exchange. I have written to him at New Castle [Delaware], where he is now engaged in the public prosecutions, to give you the information on this subject, which I know he must be possessed of.

“It will be observed that Sir Henry's declaration is, for some reason unknown to me, omitted from the [British] Blue Book.<sup>1</sup> A copy of the draft of a declaration appears on the 60th page. It is well known that I refused to accept this declaration without replying to it; and I could not have permitted him to reaffirm it again, as is substantially done by his alleged letter of 4th July, 1850.

<sup>1</sup> It is published in *Brit. and For. State Papers*, XLII, 162, 163 (1864).

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“On the 3rd of January, 1853, the whole of the correspondence [was] transmitted to the Senate by Mr. Everett in a reply to a resolution of the Senate. He sent the correspondence, *of which at that time it thus appears this letter was not a part.* No such letter was then on the files. If it had been, it must have been sent to the Senate.<sup>1</sup> Afterwards, by some means unknown to me or to the clerk who has had charge of these papers, this letter was placed among the papers and now, I hear, is to be found on file.

“The report of Mr. Everett containing the declarations on both sides, with my memorandum indorsed on the declaration of the British minister in the handwriting of Mr. Fisher and signed by me, was published in January, 1853—has been published again and again in the public papers of this country as well as in Great Britain, has been often commented upon by myself and other members of the Senate and by Lord Clarendon and Mr. Buchanan, without any [*sic*] the slightest reference to or seeming knowledge of, this letter. I have no doubt it has been fraudulently filed in the Department of State since the correspondence was sent to the Senate [1853]. In some comments

<sup>1</sup> This reasoning is not conclusive. Whoever was responsible for its admission to the files was perhaps capable of concealing it there. It is now in its proper chronological place in a substantially bound volume, and has apparently been there since the volume was originally bound. When this took place I have been unable to learn, but it was in all probability before 1853.

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of mine it clearly appears that I always believed my own memorandum correct, made at the time, which substantially denies the existence of such a letter, appears [*sic*] by the following extracts from speeches made by me in the Senate.”<sup>1</sup>

*G. P. Fisher to Clayton*  
*Washington, May 21, 1856*

“In compliance with your wish expressed last evening at your lodging, I proceed to give you in writing my recollection of what transpired at your residence on the night of July 4th and on the morning of July 5th, 1850, in regard to the exchange of ratifications, between yourself and Sir Henry Bulwer (the British negotiator), of the treaty of the 19th of April, 1850.

“I well remember the protracted conference that took place between you and Sir Henry on that occasion. He had, some days before, desired you to accept the declaration which is published on page 118 of the pamphlet containing the correspondence between Mr. Buchanan and Lord Clarendon (a copy of which was kindly forwarded to me in February last by Doctor Mackie of the Department of State), but which I think you refused to accept *as a state paper*, though in fact it was

<sup>1</sup> *Clayton Papers*, Library of Cong. XI, 2199. The memorandum referred to is the one endorsed on the British Declaration, July 5, 1850.

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received at the Department—until you had prepared the counter-declaration on the evening of the 4th of July previous to Sir Henry's visit. This counter-declaration, as stated in the memorandum, also published on page 118 of the same document, was, to the best of my recollection, given to Sir Henry on the evening of the exchange of ratifications. A long discussion ensued between you respecting the propriety of his making and your receiving, another note from him in reply to your counter-declaration; but I saw none and I knew of no other at that time. On the morning of the 5th I endorsed the memorandum above mentioned, on the declaration submitted by Sir Henry. There was then no such paper as a rejoinder by him to your counter-declaration among the papers connected with the treaty; otherwise I am sure you never would have told me to endorse on Sir Henry's declaration the memorandum which was dictated by you and written by me on the morning of the 5th, immediately after Sir Henry's departure from your house; and I hope, my dear Sir, you know me well enough to believe that I never would have consented to pen that memorandum, had any such paper, to my knowledge, been in existence. The words used in the memorandum are: "After signing my note last night I delivered it to Sir Henry and we *immediately proceeded without any further or other action* to exchange the ratifica-



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tions of said treaty." How could you possibly have made that statement within a few minutes after he had delivered you a letter which proved that you did not immediately proceed without any further or other action to exchange? If you dictated that memorandum whilst you had such a letter from Sir Henry, you deliberately put on record proof which could not fail to convict you at some future period of deliberate falsehood; and I, who recorded the statement at your request, if I had possessed any knowledge of such a paper, did an act which was certain also in after time to convict me of a participation in the guilt. What motive could possibly have influenced us or either of us, to have been so wicked or so unwise? I confess I was not a little surprised when I saw in the British Blue Book such a paper purporting to have been addressed by Sir Henry to you in reply to your counter-declaration, prior to the exchange of ratifications, and the more so since I have never seen such a paper in any document published by our Government on the Central American question or in any newspaper published in this country or in Great Britain. While I was in the Department of State I acted as your confidential clerk. I believe you withheld nothing from me, but gave me your entire confidence respecting all matters of diplomacy. I was with you day and night whilst you were negotiating this convention

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—sometimes from early breakfast till after midnight—you seemed certainly to unbosom to me every difficulty and every anxious thought concerning it in every stage of its negotiation; and I feel sure you would not have intentionally concealed from me any paper relating to it; and unless you had done so, I must have seen this rejoinder to your counter-declaration, had it then existed, for I had free access at all times, in your absence as well as in your presence, to all your papers pertaining to State affairs. I am therefore right confident that no such paper could have been received by you.

“When Mr. Everett communicated these papers to the Senate, January 3, 1853, he communicated only the declaration and your counter-declaration. (See Senate Executive Documents, No. 12, Thirty-second Congress, Second Session.)<sup>1</sup> If the pretended letter of Sir Henry was then in the Department, it must seem rather strange that the clerk who had charge of the correspondence with the British Legation should have overlooked it when complying with the Senate’s resolution calling for those papers.

“I ought perhaps further to observe that when I took the declaration and counter-declaration from your residence to the Department of State on the morning of July 5th, the memorandum en-

<sup>1</sup> Published in *Brit. and For. State Papers*, XLII, 160 *et seq.* (1864).

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dorsed in my handwriting and signed by you contained some words which do not appear in the published copy. I think you will find on inspection of the original memorandum at the Department that immediately preceding the closing sentence these words occur, viz: "The blank in the declaration was never filled up" or words substantially the same.<sup>1</sup> By that expression was meant that the date of the declaration had not been inserted when it was received; that sentence has evidently been omitted since the declaration was delivered by me in the Department. Why it has been so omitted I am at a loss to conjecture. But it would seem that since its delivery, a date has been inserted in the declaration of Sir Henry and that a different date from the true one, which should have been the 4th day of July, 1850.<sup>2</sup>

<sup>1</sup> The words quoted appear in the original memorandum on file in the State Department. They are stricken out in pencil, but perfectly legible.

<sup>2</sup> The date as originally inserted, may have been the 4th of July, 1850. The words "29" and "June" appear to have been substituted for words erased. Clayton states in his Memorandum already quoted, that he received the Declaration on the 29th of June. It bears the office mark: "Rec'd 29th June, 1850, at Dept. State." In the copy transcribed in the Letters Sent Book of the State Department, it bears the date "29th day of June, 1850" with every appearance of having been entered with the rest of the transcription. In the transcription of Clayton's Memorandum, made in the same book, the sentence, "The blank in the declaration was never filled up," does not appear. It could not have been included and erased. These circumstances show that the date, "29th" day of "June," was inserted in the declaration between the 5th of July and the date on which these transcriptions were made. This date, however, cannot be determined.

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“It is always difficult, you know, to prove a negative, but in this case the importance of the subject demands a rigid scrutiny as to the time when the declaration of Sir Henry was received at the Department. The British declaration as signed by Sir Henry is not inserted in the British Blue Book, though the form or draft of it is there. In your counter-declaration you say that “a copy of it is *hereto* subjoined” and we accordingly find it subjoined to your letter of the 4th of July.<sup>1</sup>

“The words as set forth in the Blue Book on page 63 are ‘a copy of which is *herewith* subjoined,’ but the copy does not therein appear. *Herewith* might have been consistent with the suppression of the copy, but *hereto* could not.

“On this subject, I find by referring to your speeches in January, 1854, and on the 17th and 19th of March, 1856, a period anterior to the arrival of the Blue Book in this country, that in speaking of these declarations, you always say that the exchange of ratifications took place immediately after your counter-declaration of the 4th of July, 1850.<sup>2</sup>

<sup>1</sup> Archives of the Department of State. The parts indicated by italics in the following extract are apparently substituted for parts erased.

British Legation,  
July 4, 1850

“Sir:

I understand the purport of your answer to the declaration dated the 29th June, which I was instructed to make to you in behalf of Her Majesty's government to be: that you . . .

<sup>2</sup> See also speech of March 8, 1853.

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“This was manifestly the impression fixed upon your mind whenever you expressed yourself about it after the exchange took place, and it is remarkable that Mr. Johnson in his last letter of December, 30, 1853, appended to the Senate’s Executive Document No. 13, Thirty-third Congress, First Session, uses these words, showing distinctly his impression to have been the same as your own. Rather it is not a mere impression, for he states it as a positive fact that when Sir Henry consented to receive your counter-declaration of the 4th of July, you then consented to exchange upon that counter-declaration. Mr. Johnson, I am sure, must have been familiar with the fact, as he himself states that he assisted you in drafting your counter-declaration, after you had determined to break off the negotiation, as I know you at one time did, after Sir Henry’s insisting upon making the declaration.

“But, my dear Sir, will you not permit me to suggest, that no matter what may have been the purpose of those who have inserted this pretended letter of Sir Henry among the papers in the State Department, if it should turn out to be found there, after I had, by your direction filed the genuine papers there, your counter-declaration still completely annuls the effect and defeats the intention of those who have interpolated this document among the records pertaining to this nego-

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tiation. In your counter-declaration you not only say what the dependencies of Belize are, but you expressly state that the treaty 'does include all the American States with their just limits and proper dependencies' and you go still further and inform Sir Henry that 'no alteration could be made in the convention without referring the same to the Senate,' by any declaration which he had made or could make. However important therefore it may be to detect fraud, yet so far as regards the treaty, it remains intact and must be construed by its own provisions and not by any declaration of the negotiators.<sup>1</sup> . . ."

As late as December 30, 1882, Sir Henry's pretended answer to Clayton was embodied by Lord Granville, in an "instruction" to the British minister at Washington, as bearing on the construction of the Clayton-Bulwer Treaty. A copy of this communication of Lord Granville's was furnished to our Secretary of State, Mr. Frelinghuysen, but so far as can be learned, no exception was taken to it, and the fraudulence of the Bulwer paper was never exposed. For more than sixty years it has been misleading students of history by appearing without remark in a standard compilation of the treaties of all nations.<sup>2</sup>

<sup>1</sup> *Clayton Papers*, Library of Cong., XI, 2201.

<sup>2</sup> *Recueil général de Traités*, etc., by de Martens, XV, 194.

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The mutual declarations of the plenipotentiaries at the exchange of the ratifications did not and could not in any way alter the terms or provisions of the treaty. These included, after that act as they did before, a prohibition against the establishment of a colony by either of the contracting parties in any part of Central America. According to Clayton, the term "Central America" was adopted by Sir Henry and himself "because Viscount Palmerston had assented to it and used it as the proper term."<sup>1</sup> The first instance that I find of its use in the negotiations is in a letter from Lawrence to Palmerston of November 8th, 1849.<sup>2</sup> It had been used, however, by Palmerston and Clayton before this.<sup>3</sup>

The President's understanding of the term was substantially that expressed by Clayton in his counter-declaration to Bulwer, as meaning the territory of the late Confederate States "with their just limits and proper dependencies," including so much of British Honduras as lay within those limits, and excluding all that lay without them.<sup>4</sup>

<sup>1</sup> Clayton to Bulwer, July 4, 1850.

<sup>2</sup> Appendix C.

<sup>3</sup> For instance, Palmerston to Castellon, minister of Nicaragua, April 26, 1849, and Clayton to Squire, May 1, 1849.

<sup>4</sup> I most certainly would bear testimony "that the whole subject was referred to the President and perfectly understood by every cabinet minister as well as by the President himself," and until the charge was made against you in the Senate on the 6th [of] January, which you have now so triumphantly met, I could

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At this time the federation had been a thing of the past for about ten years. To exclude British Honduras from Central America it was necessary to take this term in an obsolete sense. That such use of it was intended to mislead cannot be proved and is therefore not to be asserted or insinuated, but that it did mislead and, by so doing, was an important factor in securing for the treaty the vote which it received in the Senate, may be accepted as an established fact.

The just limits of the federation of *Centro-América* were never determined, as Clayton suggested they should be, by "a conventional article." Sir Henry Bulwer wrote to Lord Palmerston (August 6, 1850):

not have supposed it possible that any member of the Senate could have understood the treaty otherwise than we did (Reverdy Johnson to Clayton, March 17, 1853. *Clayton Papers*, Library of Congress).

Further evidence on this point may be found in the phrase "concerning the States of Central America and the Mosquito Coast," used by the President in the full powers which he issued to Clayton on the 6th of April, about two weeks before the signing of the treaty (Appendix D). The term "States of Central America" is obviously political not geographical. This meaning is emphasized by the use of the connective "and." If "Central America" had been used in a geographical sense, the phrase should have read "Central America, including the Mosquito Coast." It is true that, taking the term Central America in its political sense, "including," not "and," was the proper connective, as the Mosquito Coast was politically included in the Central American states of Honduras and Nicaragua, but Great Britain denied this fact and as a consequence this phraseology, both in the full powers and in the treaty (Article I), inconsistent as it was with the contentions of the United States, was tolerated as a concession to the British attitude.



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The term "Central America" is used by Mr. Clayton and myself in our convention.

The usual acceptance given to it would simply embrace the five states, viz: Honduras, Guatemala, Salvador, Nicaragua, and Costa Rica, which formerly constituted the Central American Republic.

I think it might be advisable that the two governments come to a clear understanding as to whether they mean that the five states in question with their just boundaries, whatever those boundaries may be, are meant by the term "Central America."

Lord Palmerston took the hint thus given him and retained the diplomatic advantage of imperfect definition. He wrote to Bulwer (September 11, 1850):

. . . It will be sufficient for the purpose of the convention to construe the term "Central America" as comprising those States which formed the republic formerly known by that name; that is to say, Guatemala, Costa Rica, Nicaragua, Salvador and Honduras; and it is not necessary that their boundaries should be especially defined.

Lord Clarendon, who succeeded Lord Palmerston as Foreign Secretary, being inadequately posted, it would seem, caused some confusion by using the term Central America with the meaning which he had been accustomed to give to it. Writing to the British minister at Washington (May 27, 1853), he said:

Great Britain has nowhere in the treaty of 1850 re-

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nounced, nor ever had any intention to renounce, the full and absolute right which she possesses over her own lawful territories in Central America, such as that designation [Central America] was distinctly understood and declared, by the negotiators of the Treaty.

Great Britain had never claimed any territory in "Central America" as "her own." Lord Clarendon found it easier to leave this language of his unexplained than to explain that the possession to which he referred as in Central America was British Honduras. But he later admitted his mistake indirectly by saying:

It is generally considered that the term "Central America"—a term of modern invention—could only appropriately apply to those states at one time united under the name of the "Central American Republic," and now existing as five separate republics. (Clarendon to Buchanan, May 2, 1854.)

With respect to the district of Belize, Her Majesty's government consider that the only question to be determined as regards Central America is that of the boundary between that country and the British Possessions (Clarendon to Dallas, June 26, 1856).

Referring to such lapses as Clarendon's, Crampton wrote:

. . . I am at present unable to supply you with an explicit explanation of the passages of the dispatches from which it seems to be inferred that Belize is stated by the British government to be situated in Central

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America. . . . A fair inference, however, from the text of treaties and other documents to which I have access, with regard to the title of Great Britain to British Honduras and its dependencies, would lead me to conclude that British Honduras is situated in Mexico and not in Central America, properly so-called. . . .

It occurs to me that in the dispatches in question . . . the term "Central America" may have been used in some geographic sense in which it has not unfrequently been applied to the central part of this continent, and not in the true political and diplomatic meaning of the term. I would remark too that the boundaries of Central America, in the political sense, are in some respects, not yet completely defined, more particularly as regards the boundary between Costa Rica and New Granada, which is still in dispute between those states.<sup>1</sup>

A court of arbitration would probably have decided this question of boundary by a compromise and have drawn the Belize-Guatemala line somewhere between the Sibun and the Sarstoon rivers, but this would only show, as did the award in the Anglo-Venezuelan boundary dispute, how unjust arbitration can be. There can be no reasonable doubt that the just limits of Guatemala on the north were the line of the Sibun River, if not a line further north. President Taylor was probably as vague in his idea on this point as Clayton was, but no more so. It may be concluded that he understood the line of demarcation to be somewhere between the Sibun and the Sarstoon rivers.

<sup>1</sup> Crampton to Clayton, Jan. 7, 1854. *Cong. Globe*, 1855-1856, p. 1205.

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How did the Senate see it? In his message transmitting the treaty to the Senate, President Taylor said: "Should this treaty be ratified it will secure in future the liberation of all Central America from any kind of foreign aggression." He gave no definition of the term Central America. *Johnson's Gazetteer*, published in London in 1851, contained the following delimitation of the country:

Central America is the long and comparatively narrow region between latitude 7° and 22° north and longitude 78° and 94° west, connecting the continents of N. and S. America, and comprising, besides the Central Amer. Confed., Yucatan, parts of Mexico and New Granada, Poyais, the Mosquito Coast, and British Honduras. In a more limited sense the term is applied to the following republics. . . .

[mentioning Guatemala, San Salvador, Honduras, Nicaragua and Costa Rica]

It was a small portion of the people of Great Britain or of the United States who ever thought of British Honduras at all, and during the negotiation of the Clayton-Bulwer Treaty this territory was little in the minds of the American public, of the plenipotentiaries, or of the Senate. Attention was generally fixed upon the Mosquito Coast. Clayton and Bulwer understood British Honduras to be wholly or for the greater part,

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outside of Central America; of the people generally who gave any thought to the subject, there were more who thought of it as in Central America than who thought of it as outside of it; there was thus a sufficient number who thought of it as within Central America to call for a special understanding, if it was to be considered as outside of it. Unless otherwise defined or explained, the term Central America would be taken in its geographical, or usually accepted sense, and so be understood to include all of British Honduras. Was there any special definition or explanation of it given to the Senate? In his note of July 4th to Senator King, Clayton asked, "May I have your permission to add that the true understanding was explained by you, as chairman of [the committee on] foreign relations, to the Senate, before the vote was taken on the treaty?" King did not give this permission, he did not say that he or anyone else had explained the matter to the Senate. He simply asserted, without any accounting for his knowledge or belief: "The Senate perfectly understood that the treaty did not include British Honduras." He meant that the Senate understood, as Clayton understood, that the treaty did not include legitimate British Honduras; but that it did include all the territory within the late Federation of the Centre of America. But with this meaning the assertion was

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challenged and denied by a number of senators who were in the Senate when the treaty was acted on. Among these were: Borland, Cass, Chase, Downs, Mason, and Soulé,<sup>1</sup> who with the possible exception of Cass, spoke not only for themselves, but for the Senate generally, to the effect that the treaty was understood to include all British Honduras. Senator Chase quoted the first sentence only of the foregoing delimitation (*Johnson's Gazetteer*) and said:

“. . . That is the description which we had a right to believe was intended by this treaty when it was presented to the Senate.”<sup>2</sup>

There is a difference between having a right to believe and believing. But the former implies the latter and the actual belief of the Senate was thus asserted:

Now, Sir, I am perfectly free to say for one that, doubting greatly as I did at the time the expediency of the ratification, I should never have voted for it, had I supposed that any secret construction was put upon it irreconcilable with the obvious import of its language. It would have been impossible, in my judgement, to have secured its ratification, had its language conveyed the sense which the private interpretation of Mr. Clayton's letter puts upon it. Indeed I doubt whether any Senator would have voted for its ratification, had it been sup-

<sup>1</sup> Senate speeches: Borland, Jan. 10, 1853; Cass, *id.*, Jan. 11 and 16, 1854; Chase, Jan. 6, 1853; Downs, Jan. 6 and 10, 1853; Mason, March 14, 1853; Soulé, Jan. 10 and 12, 1853.

<sup>2</sup> Senate Speech, Jan. 6, 1853.

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posed that at the very time the treaty was under consideration here a correspondence was in progress, of which the Senate was not apprised, with the view of fixing in advance the construction of the treaty, by imposing upon its terms a sense quite different from their natural and obvious import.<sup>1</sup>

But this reminiscing took place a number of years after the treaty was negotiated, while the United States was in controversy with Great Britain over her colonization of the Bay Islands as a dependency of British Honduras, when the United States was for this reason interested in making out a case against Great Britain with regard to British Honduras. So considering the fallibility of memory and the force of patriotic bias, it would not seem judicial to accept the statements of these half a dozen senators as conclusive against the testimony borne by Senator King at the time of the negotiation. Our conclusion then is this. From the River Sibun (taking this line as northern boundary of Guatemala), southward to the Sarstoon River, the colonization of British Honduras fell within the limits of Central America, as that term was used in the Clayton-Bulwer Treaty, and was therefore a violation of the treaty. North of the Sibun as well as south of that line, it was a contravention of the Monroe Doctrine.

On the 3rd of December, 1860, President Bu-

<sup>1</sup> *Cong. Globe*, Jan. 6, 1853, p. 238.

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chanan, in an annual message to Congress, said:

The discordant constructions of the Clayton-Bulwer Treaty between the two governments, which at different periods of the discussion, bore a threatening aspect, have resulted in a final settlement entirely satisfactory to this government.

About twelve years later, British Honduras having in the meantime been declared a colony, Lord Granville wrote to the British ambassador in Washington:

The points in dispute were practically conceded by this country [Great Britain] and the controversy terminated in a manner which was declared by President Buchanan to be amicable and honorable, resulting in a final settlement entirely satisfactory to the government of the United States.<sup>1</sup>

These statements have been extensively quoted as evidence of the satisfactory settlement of the Clayton-Bulwer controversy. But they are incorrect so far as they refer to British Honduras.

Under the assumption of a protectorate of Mosquito, British authority was at that time [1850] in actual visible occupation of one end of the Nicaragua route, whether with or without title is not now material, and it was intended by this treaty to dispossess Great Britain of this occupation. This object was accomplished in 1859 and 1860 by treaties between Great Britain, Guatemala, Hon-

<sup>1</sup> Granville to West, Jan. 14, 1882.



## *The Bay Islands*

duras, and Nicaragua, referred to in Lord Granville's dispatch of January 14th, 1882. It was to this adjustment, which was one of the prime objects of the treaty and not to the colonization of British Honduras, that Mr. Buchanan in his message of December 3, 1860, alludes as an amicable and honorable adjustment of dangerous questions arising from the Clayton-Bulwer Treaty. . . .

The United States have never given their assent to this conversion of the British "settlement" in Central America, under Spanish American sovereignty, into a British possession with British sovereignty.<sup>1</sup>

## *The Bay Islands*

In the Bay of Honduras, at a distance of from thirty to fifty miles from the State of Honduras, is a cluster of islands known in English as the Bay Islands. The largest one, called Roatan, is about eighty-four miles in circumference. The others in order of size are Quanaja,<sup>2</sup> Utila, Barbaretta, Helena, and Morat. About them, the gulf is strewn with wooded islets or keys that look like floating groves. Roatan, which was discovered by Columbus in 1502, was seized and occupied by British freebooters in 1642 and held by them until 1650, when the invaders were expelled by the captain-general of Guatemala. The Indians inhabiting the island were transported to the mainland and the island left uninhabited. A century later

<sup>1</sup> Frelinghuysen to Lowell, May 8, 1882.

<sup>2</sup> Or Bonacca.

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the British descended upon it, established and fortified themselves on it, but in 1780 they were again expelled. The treaty of peace of 1783 provided that they should abandon not only the continent, with the exception of Belize, but also "all islands whatever dependent upon it." As the British evaded the stipulations of this treaty more stringent terms were made by the Treaty of 1786. These required that they "evacuate the country of the Mosquitos, as well as the continent in general, and the islands adjacent without exception." This time the agreement was kept. Great Britain abandoned the island. In 1796, being at war with Spain, she conquered it again, but in 1797 she had again to give it up. By her treaty with Spain of 1814, she was excluded "from the country of the Mosquitos, the continent in general, and the islands adjacent without exception." When in 1821 the Central American provinces achieved their independence the Bay Islands were under the jurisdiction of the province of Honduras. They remained subject to the government of Honduras when that province became a State and when that State entered the Federal Republic of Central America. They so continued until May, 1830, when the British Superintendent of Belize made a descent upon Roatan and seized it in behalf of the British Crown. The Federal Republic made an immediate and energetic remonstrance, and the

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act was formally disavowed by the British Government and the island again abandoned. In 1838 a party of liberated slaves from the British island of Gran Cayman came to the island to settle. A fraction of this party, not conforming to the laws of Honduras for the government of the island, had a difference with its commandant. As a consequence the Superintendent of Belize took possession of the island a second time in 1839. The British Government sanctioned his actions and continued to support the British settlers. More Cayman Islanders came to swell the natural increase of the original settlement. The Federal Republic having dissolved, Honduras remonstrated alone, but in vain. Salvador acted in the matter in concert with the State of Los Altos. On the 10th of August, 1839, she signed with the latter a treaty of amity and alliance containing the following provisions:

*Article 8.* The representatives of both contracting states shall be fully authorized to treat with respect to the means conducing to the recovery of the Island of Roatan.

*Article 9.* It is likewise agreed by the contracting parties— First: that no agricultural or manufactured product of any English possession shall be admitted [to their respective territories], under whatever flag it may come. Second: that no merchandise coming from another nation, shall be admitted to our territory, if it comes in an English vessel; and third, that these pro-

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hibitions shall last as long as England may fail to put Central America in possession of the said Island of Roatan.

Chatfield, the British consul-general, considered these articles an unprovoked indignity to the British Crown and called upon the moribund government of Los Altos for humiliating reparation. He went so far as to send to its Secretary of State a draft of a retraction for him to sign, worded as follows: <sup>1</sup>

The consul of His Britannic Majesty, having represented to the sovereign government of Los Altos that articles 8 and 9 of the treaty of amity and alliance, signed at Quezaltenango, the 10th of August of last year, between the sovereign states of Los Altos and Salvador are an infraction of the principles of amity and good understanding which have hitherto happily regulated the intercourse between Great Britain and the States of Central America.

The supreme government of Los Altos, desirous of preventing the interruption of friendly relations with Great Britain, makes the formal declaration that articles 8 and 9 of the forementioned treaty of Quezaltenango, being offensive to the English Crown, are hereby rescinded.<sup>2</sup>

The proposition was declined.<sup>3</sup> Salvador and Los Altos held their position, but so did the British.

In 1841, Macdonald, the superintendent of Bel-

<sup>1</sup> Translated from the Spanish.

<sup>2</sup> Montúfar III, 72, 73, 425.

<sup>3</sup> Molina to Chatfield, Jan. 18, 1840.

## *The Bay Islands*

ize, with the aid of a naval contingent, occupied Roatan and continued along the coast in an English frigate, flying the Mosquito flag, stopping at San Juan and maltreating as already related, Colonel Quijano, the commandant of the port.<sup>1</sup>

The British Government instructed the governor of Jamaica in case any foreign power took possession of Roatan, to order the departure of the intruders and, if not obeyed, to eject them. Meanwhile the population was increased by an addition of English settlers, and Macdonald seeing his opportunity, offered to appoint magistrates for them. Sometime later the offer was accepted and thereafter magistrates were regularly appointed by the Belize superintendent.<sup>2</sup>

When the Clayton-Bulwer Treaty was concluded, Great Britain was still in possession of the Island of Roatan, or supporting her squatter subjects in their unlawful occupation of it. The thought which she now gave to withdrawing from the Mosquito Coast magnified the importance to her of the Bay Islands. She was unwilling to give up the mouth of the San Juan River without taking a position from which she could command it. As such position she chose Roatan, with a number of other islands in its vicinity. Accordingly, on the 17th of July, 1852, a proclamation was issued by

<sup>1</sup> *Ocean to Ocean* by J. W. G. Walker.

<sup>2</sup> *Anglo-American Isthmian Diplomacy* by M. W. Williams, p. 39.

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the acting colonial secretary at Belize declaring that "her Most Gracious Majesty the Queen, has been pleased to constitute and make the islands of Roatan, Bonacca, Utila, Barbaretta, Helena, and Morat to be a colony, to be known and designated as the Colony of the Bay Islands," and on the 10th of August, 1852, more than two years after the ratification of the Clayton-Bulwer Treaty, these islands off the coast of Honduras and belonging to that country, were formally occupied and declared annexed to the superintendency of British Honduras.

In a paper addressed to Lord Clarendon and dated July 22, 1854, Mr. Buchanan, our minister in London said:

When the [Clayton-Bulwer] treaty was concluded Great Britain was simply in the occupation of Ruatan, under the capture made by Colonel McDonald [Governor of Belize]. She had established no regular form of government over its few inhabitants who, to say the least, were of a very heterogeneous character. She had then taken but the first step, and this in the face of the remonstrance of Honduras, towards the appropriation of the Island. . . . Her relation towards Ruatan at this time was merely that of a simple occupant. From this occupancy it was easy to retire . . . Instead, however, of taking one step backward, the government of Great Britain has since taken a stride forward, and has proceeded to establish a regular colonial government over it. But this is not all. They have not confined themselves to Ruatan alone, but have embraced within their colony

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five other Central American islands off the coast of the State of Honduras. One of these, Bonacca, says Bonnycastle, is an island about sixty miles in circumference, . . . It was not known however in the United States that the British government had ever made claim to any of these five Central American islands previous to the proclamation announcing their colonization.

Sir Henry Bulwer, in his letter of July 4, 1850, to Secretary Clayton, alleged that Clayton had recognized certain islands as dependencies of Belize and as not included in the treaty. Subsequently the British Government contended that the islands thus recognized were the Bay Islands. Clayton had recognized as possibly constituting dependencies of British Honduras "the small islands in the neighborhood of that settlement" [of British Honduras]. But the Bay Islands were in the vicinity, not of British Honduras, but of Honduras. Even if they were dependencies of British Honduras, they were not recognized by Clayton, as outside of the treaty. Clayton's words were: "To this settlement and these islands" [in the neighborhood of British Honduras], not to this settlement and its dependencies, "the treaty we negotiated was not intended by either of us to apply." There was no reference here to the Bay Islands. Moreover he expressly included the Bay Islands in the treaty, as he did every other territory, in case it proved to be comprised in the term

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“Central America.”<sup>1</sup> He quoted from Senator King that “the Senate perfectly understood that the treaty did not include British Honduras,” but not a word did King say about dependencies. Neither Clayton nor the Senate understood that the Bay Islands were dependencies of British Honduras, and both regarded them as included in the treaty. The British Government, on the other hand, held that they were dependencies of British Honduras, and that, British Honduras not being in Central America, these islands were not in Central America, and that not being in Central America, they were not included in the treaty. That they were not dependencies of British Honduras is borne out by British as well as by American evidence. In the dispatch already quoted from Sir George Grey to S. Coxe, Esquire, of November 23, 1836, the limits of British Honduras are defined. Their most eastern point is given as Light House Reef, which is about seventy-five miles from Roatan.

In a letter to Secretary Clayton, dated January 7, 1854, Mr. Crampton, the British minister at Washington, said:

The dependencies of British Honduras are in my opinion distinctly enumerated in the treaty of 1786.

<sup>1</sup> Clayton to Bulwer, July 4, 1850.



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In this treaty, they are delineated as follows:

. . . The point of Cayo Casino [St. George's Key] and the cluster of small islands which are situated opposite that part of the coast occupied by the [wood] cutters at the distance of eight leagues from the Wallis River, seven from Cayo Casino, and three from the river Siboon.

These are the islands previously referred to as adjacent to British Honduras. But assuming for the sake of argument that Clayton and Bulwer had agreed that the treaty did not apply to her "Majesty's settlement at Honduras or to its dependencies" [including the Bay Islands] such agreement would not have bound the United States, seeing that it was never approved by the President or the Senate, whose joint approval was required by the terms of Clayton's full powers.

On the 17th of March, 1856, Clayton, then Senator from Delaware, remarked in the Senate:

There is no evidence that Great Britain ever had possession of them [the Bay Islands] before she established this colony in open defiance of the Treaty.

Exactly a fortnight later, Mr. Crampton, in a dispatch to Lord Clarendon, said: . . . "it will be within your Lordship's recollection that Mr. Clayton was informed by Sir Henry Bulwer, before the Treaty of 1850 was signed, that Ruatan was *de jure* and *de facto* a British possession; and Mr. Clayton has on various occasions since, in conver-

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sation with me, stated that he considered Ruatan as much a British possession as Jamaica or any other British West Indian Island.”<sup>1</sup> Seeing this extract in a newspaper, Senator Clayton, on the following day (May 14, 1856), read it before the Senate and proceeded:

Now, Sir, I wish to say in reference to this statement of conversations with me, that it is utterly untrue in every particular, and that the British minister must have labored under one of the strangest hallucinations that ever affected the brain of any man in making such a statement . . . nothing like what he imputes to me ever escaped from me to him or to any one else. . . .

He wrote to Mr. Crampton (May 16):

. . . In the extract of your letter to Lord Clarendon you stated that “Mr. Clayton had on various occasions in conversation with me (you), stated that he considered Ruatan as much a British possession as Jamaica or any other British West India Island.” In reply to this I said, in my place in the Senate, as appears by the official report of the debate, these words: “Now, Sir, I wish to say, in reference to this statement of conversations with me, that it is utterly untrue in every particular,” etc. This I maintain it now to be.<sup>2</sup>

These assertions of Clayton’s were corroborated by statements of Senators Crittenden, Cass, and Fish.<sup>3</sup>

Clayton had recognized the Bay Islands as oc-

<sup>1</sup> Crampton to Clarendon, March 31, 1856.

<sup>2</sup> *Clayton Papers*, XI, 2196.

<sup>3</sup> *Cong. Globe* (1855-1856), pp. 1205-1207.

## *The Bay Islands*

cupied in fact by Great Britain, but he meant that the treaty, being immediate in its operation, should terminate that occupation.

. . . I have been represented, he said, as denying that any letter was ever written by Sir Henry L. Bulwer to me before the Treaty of 1850, claiming Roatan as a British Island. Sir Henry not only wrote me such a letter, but in conversation claimed the island as British, as fully as he claimed the right of Great Britain to the protectorate of Greytown and the Mosquito Coast. But I have always considered that the treaty of Great Britain signed after his claim was presented as effectually deprived Great Britain of the right to occupy that island, if it is within the limits of Central America (as I feel assured it is), as it disarmed her protectorate or deprived her of the right to use it [her protectorate] for the purpose of occupying any other part of Central America.<sup>1</sup>

Here he may have erred. He had perhaps no right to consider the treaty as retroactive. As long as British control of the Bay Islands, of the Mosquito Coast, or of Belize remained what it was before the conclusion of the treaty, the United States had possibly no grounds for complaint. But here was a change made subsequently to that transaction. Referring to the conversion of the Bay Islands from a mere settlement into a colony, Lord Clarendon wrote to Buchanan (May 2, 1854):

<sup>1</sup> Clayton to Crampton, May 16, 1856. (*Clayton Papers*, XI, 2196).

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. . . Her Majesty's government cannot admit that an alteration in the internal form of government of these islands is a violation of the treaty, or affords a just cause of remonstrance to the United States.

On this point the United States took issue with Great Britain. It held that the treaty prohibited the transformation of a squatter settlement into a colony. This violation of the Clayton-Bulwer Treaty and contravention of the Monroe Doctrine continued until 1859, when in a treaty with Honduras, Great Britain recognized the islands as a part of that republic, thus returning them to the country to which they belonged.

That the Clayton-Bulwer Treaty was first proposed by the United States is a misleading half truth, none the less but so much the more mischievous for its approval and propagation by an eminent publicist.

Let me repeat, says Senator Root, that this treaty was sought, not by England, but by the United States. Mr. Clayton, who was Secretary of State at the time, sent our minister to France (Mr. Rives), to London for the purpose of urging upon Lord Palmerston the making of the treaty. The treaty was made by Great Britain as a concession to the urgent demands of the United States.<sup>1</sup>

If a bandit places himself in my doorway, the only way out of my house, and I propose as a condition to his releasing me that he take my purse, it might be said with equal truth that this trans-

<sup>1</sup> Senate Speech, Jan. 21, 1913.

## *The Bay Islands*

action was sought, not by the bandit, but by me; that the money was accepted as a concession to my demands. The Clayton-Bulwer Treaty was forced upon the United States. It is hardly an exaggeration to say that it was made under duress.

It has been said that the canal could not have been built without the financial assistance of Great Britain, and that we made the treaty to secure that assistance. To quote from our State papers:

The government and people of the United States, though rich in land and industry, were poor in floating capital in 1850. The scheme for a canal, even without the complications of the Mosquito protectorate, was too vast for the means of the Americans of that day, who numbered then less than one half of their numbers to-day. They went to England, which had what they had not, [they] surrendered their exclusive privileges, offered an equal share of all they had in those regions, in order, as expressed in the seventh article of the treaty, "that no time should be unnecessarily lost in commencing and constructing the said canal"<sup>1</sup> . . . this government . . . holds, as stated, to you in my instructions of May 8th, 1882, and May 5, 1883, that for the purpose of obtaining the then needed capital to construct an interoceanic canal, by the Nicaraguan route, the United States were willing to surrender a part of their exclusive privileges in a canal by that route,<sup>2</sup> . . .

These views, expressed about thirty years after

<sup>1</sup> Frelinghuysen to Lowell, May 8, 1882.

<sup>2</sup> *Id.*, Nov. 22, 1883.

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the negotiation of the treaty, are peculiar to a single secretary rather than traditional in the Department of State. Comparatively soon after the negotiation, the then secretary put the matter thus:

Considering that the United States and Great Britain have jointly agreed to protect such a canal . . . it seems desirable that the capital required for its construction should be advanced by the citizens and subjects of both countries. If, however, English capitalists should not be disposed to invest their funds in the enterprise, the means of its construction can easily be obtained in this country whenever our citizens shall be satisfied of its practicability and that it would yield a regular and fair profit.<sup>1</sup>

If there was any difficulty about raising the necessary money in the United States, it was due to fear of interruption of the transit and consequent loss of dividends, as an incident of war forced upon the United States, and not to the lack of available capital in the United States. A United States author said in 1820:

If Costa Rica were in possession of a liberal government, willing to lend its encouragement to this important object, capital in abundance would speedily be forthcoming, either from Great Britain or from the United States.<sup>2</sup>

<sup>1</sup> Webster to Lawrence, May 14, 1852.

<sup>2</sup> *Memoirs of the Mexican Revolution*, etc., by W. D. Robinson, p. 349. It should be noted that when this was written the Federation of Centre America, which included Costa Rica as well as Nicaragua, had not been formed.

## *The Bay Islands*

This language was quoted with approval by a British writer in 1825.<sup>1</sup> In 1850 another British writer said:

. . . We must look, not only at the traffic which is even now before us, but we must take into account its natural increase from the greater cheapness and rapidity of the new route. We must also look at the growing importance of Oregon and to the certainty of the crowd of small steamers that will rapidly accumulate on the Pacific from the smoothness of its waters and the abundance of the easily worked coal of Vancouver Island.

At the same time, although the view is thus bright, there is no great likelihood that it will attract any amount of English money. . . . In the United States, however, the feeling is very different, and every year vast works are quietly undertaken there and carried to completion in a way which would surprise those numberless people who are too apt complacently to believe that all the world stands still, except when funds are sent from London. . . . "I would not speak of it," said one of their writers a few years back, "with sectional or even national feeling, but if Europe is indifferent, it would be glory surpassing the conquest of kingdoms to make this greatest enterprise ever attempted by human force entirely our own."

We may rely, therefore, that the day is gone by when the undertaking could be neglected for want of funds. If carried out entirely by capitalists in the United States, it will probably be pushed forward with less rapidity than would otherwise be the case; but this will be far more than compensated by the exercise of greater economy and certainty.<sup>2</sup>

<sup>1</sup> *A succinct View and Analysis*, etc., by R. B. P. Pitman, p. 110.

<sup>2</sup> *Westminster Rev.* (Am. Ed.) April, 1850, pp. 70, 71.

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When this was written the Erie Canal, built by the State of New York, was twenty-five years old, and work on the Panama Railroad was just about to begin. The latter was completed in 1855. Each of these enterprises cost from \$7,000,000 to \$8,000,000. This money was raised for the Erie Canal by taxation in the State of New York and for the Panama Railroad by private subscription, partly British, but for the greater part United States. The cost of the prospective canal across Nicaragua was variously estimated at from \$20,000,000 to \$50,000,000. But the population of the United States in 1850 was over 23,000,000, while the people of New York in 1825, when they completed the Erie Canal, numbered a little over 1,000,000.

That the United States, in its negotiation of the Clayton-Bulwer Treaty, was actuated by any sense of financial necessity would seem to be an after-thought of a few publicists and historians. Its motive in negotiating the treaty was simply to remove the obstruction and danger to the canal constituted by British encroachments and pretensions in Central America.



## VI

### THE TREATY OF WASHINGTON (1871). GENERAL CONCLUSION

#### *The Treaty of Washington*

This treaty had several purposes. Its principal one was to settle the claims of the United States based on the operations, during the Civil War, of Confederate commerce destroyers built and equipped within British jurisdiction. The most notable of these vessels was the *Alabama*, and the claims came consequently to be known collectively as the Alabama Claims. They were of two kinds: direct and indirect. The direct claims were based on the actual destruction and capture of ships and cargoes by the Confederate vessels, and the indirect on the following forms of damage incidental to such depredation: the transfer of a large part of the commercial marine of the United States to the British flag, the enhanced payment of insurance, the prolongation of the war, and the addition of a large sum to the cost of it. These were also called national claims or consequential claims. The money liability of Great Britain for both direct and indirect damages was estimated by

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Charles Sumner as \$2,500,000,000 or more. A joint high commission composed of five British and five United States commissioners met in Washington and agreed upon the terms of a treaty for the arbitration of all the claims. It contained among others, the following provisions:

Article I. Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama Claims":

And whereas Her Britannic Majesty has authorized her High Commissioners and Plenipotentiaries to express in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports and for the depredations committed by those vessels.

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims which are not admitted by Her Britannic Majesty's Government, the high contracting parties agree that all the said claims growing out of acts committed by the aforesaid vessels and generically known as the "Alabama Claims," shall be referred to a tribunal of arbitration to be composed of five Arbitrators, to be appointed in the following manner; that is to say: One shall be named by the President of the United States; one shall be named by Her Britannic Majesty; His Majesty the King of Italy shall be requested to name one; the President of the Swiss Confederation shall be requested to name one; and His Majesty the Emperor of Brazil shall be requested to name one.

## *The Treaty of Washington (1871)*

The ratifications were exchanged at London on the 17th of June, 1871. The following arbitrators were appointed:

By President Grant: Charles Francis Adams, late minister at London.

By Queen Victoria: Sir Alexander Cockburn, Lord Chief Justice of England.

By the King of Italy: Count Frederic Sclopis, of Turin, Senator.

By the President of Switzerland: Jacques Staemfli.

By the Emperor of Brazil: Baron Itajubi, then his Majesty's minister plenipotentiary at Paris.

Each party had an agent "to represent it generally." That of the United States was J. C. Bancroft Davis; that of Great Britain, Lord Tenterden. The counsel for Great Britain was Sir Roundell Palmer, who had as assistant, Professor Montague Bernard. The counsel for the United States was composed of Caleb Cushing, W. M. Evarts, B. R. Curtis, and M. R. Waite.

The tribunal assembled at Geneva, Switzerland, on the 15th of December, 1871. Mr. Davis and Lord Tenterden presented the cases of their respective governments, and the tribunal directed that the respective counter cases, additional documents, correspondence, and evidence called for or permitted by the treaty be delivered to the secretary of the tribunal on or before the 15th of

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April, 1872. The treaty required that within two months after this date the agents of the opposing parties should present the arguments of their respective governments to the tribunal.<sup>1</sup> In order that they should have all the time therefor that the treaty allowed, the tribunal, in adjourning on the 16th of December, fixed the date of its reconvening as the 15th of June, 1872.

Soon after this adjournment the case of the United States became publicly known through copies distributed in England and the United States. In the meantime the British high commissioners had returned from Washington and created or confirmed the impression that there would be no indirect claims. They represented that they had secured a waiver of them from the United States. This they had no authority to do.<sup>2</sup> There could hardly be a better judge of the meaning of a treaty than the astute diplomat who, with Mr. Clayton, negotiated the Clayton-Bulwer Treaty. Referring to this Treaty of Washington, Sir Henry Bulwer wrote on the 17th of February, 1872:

How when our only inducement to make a treaty was

<sup>1</sup> It shall be the duty of the Agent of each party within two months after the expiration of the time limited for the delivery of the counter-case on both sides, to deliver in duplicate to each of the said Arbitrators and to the Agent of the other party, a written or printed argument showing the points and referring to the evidence, upon which his government relies. . . . (Art. V).

<sup>2</sup> Hackett, *Reminiscences of the Geneva Tribunal*, p. 1720; Papers relating to the Treaty of Washington, III, 188.

## *The Treaty of Washington (1871)*

to set this claim for indirect damages at rest, we could frame one which opened it, is to me miraculous. How they could introduce into such a document the term "growing out of," which would hardly occur to any one but a market gardener, is also a marvel.<sup>1</sup>

The statement of the case of the United States prepared by its agent in accordance with the views of its Government, embraced both the direct and the indirect claims.<sup>2</sup> When England fully comprehended it, the excitement in the London press and in both houses of Parliament was intense.<sup>3</sup> The air was filled with resentment and protestation. On the 2nd of February, 1872, General Schenck, United States minister at London, cabled to Mr. Fish:

London journals all demand that United States shall

<sup>1</sup> *Biog. and Crit. Essays* by A. H. Hayward, Esq., p. 328.

<sup>2</sup> Davis to Fish, Sec. of State, Nov. 13, 1871: Herewith I hand you a printed copy of the Case which I have prepared, to be presented to the Tribunal at Geneva on behalf of the United States. The case will be accompanied by seven volumes of Documents, Evidence, and Correspondence. . . . The seventh volume contains some miscellaneous matter and full statements of the claims for losses, national and individual. The former were prepared at the Navy Department. Their completeness leaves nothing to be desired. The latter were prepared under my direction by the clerks in this Department [of State] . . .

Fish to Davis, No. 14, 1871: I have received the copy of the Case with your accompanying letter of yesterday. The President approves of your presentation of the Case, and you are instructed to present it and the seven accompanying volumes, at Geneva in the manner required by the Treaty, as the case of the United States, and the documents, official correspondence, and other evidence on which they rely.

<sup>3</sup> Rhodes, VI, 366.

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withdraw claims for indirect damages, as not within intention of Treaty. . . .

On the following day the Secretary replied:

There must be no withdrawal of any part of the claim presented. Counsel will argue the Case as prepared, unless they show to this government reasons for a change.

On the same day the British Foreign Secretary wrote to General Schenck:

Her Majesty's Government hold that it is not within the province of the Tribunal of arbitration at Geneva to decide upon the claims for indirect losses and injuries. . . .

On the 7th of May, Fish cabled to Schenck:

. . . the submission of what are called the indirect claims is within the province of the Tribunal. The President alone has not the power to change or alter the terms or the principles of a treaty. He is . . . anxious to exhaust all proper efforts to reach a settlement . . .

He will therefore be willing to consider, and if possible, will present for the consideration of the Senate, any new article of the Treaty which may be proposed by the British Government and which, while it settles the principle involved in the presentation of what are called indirect claims, will remove the differences which have arisen between the two Governments in their construction of the Treaty.

In compliance with this suggestion the British

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Government, on the 10th of May, 1872, proposed through General Schenck the negotiation of an additional article eliminating the indirect claims. On the 13th of May this proposed article was communicated by President Grant to the Senate, not as part of a treaty for ratification but as a request for "an expression by the Senate of their disposition in regard to advising and consenting to the formal adoption of an article" such as the one proposed. If the reply was favorable, a treaty was to be prepared and submitted to the Senate for its regular action. On the 25th of May the article was returned to the President with amendments by the Senate.<sup>1</sup>

The important feature of its alteration was the substitution of a past tense for the present tense in the contention of the United States respecting indirect claims. As amended the article said nothing as to the present understanding of the treaty by the United States. It bound the United States not to sue for indirect damages, but did this irrespectively of the right which it might have under the treaty or otherwise to bring such suit. This did not seem to the British Government sufficient protection against the indirect claims, and the article was never ratified.<sup>2</sup>

<sup>1</sup> Appendix E.

<sup>2</sup> . . . the English with an apprehension that was almost comic, believing that the arbitrators might insist on considering the indirect claims, although the United States refrained from urg-

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When on the 15th of June, 1872, the tribunal convened at Geneva, the printed argument of the United States was presented by Mr. Davis. It was expected that the British agent would thereupon present the argument on his side. Instead of that, Lord Tenterden offered a note in which he asked the Court to grant an adjournment for a period long enough to enable the two governments to conclude and ratify a supplementary convention (the additional article still pending between the two governments), expressing regret that he could not present his argument; in other words, declining to present it. He did not present it, and by such failure, violated Article V of the treaty. When asked how long a period should be allowed for the negotiations which he proposed, he replied eight months.

The tribunal adjourned only to the 17th of June. Understanding rightly that Great Britain was determined to wreck it rather than allow the arbitration of indirect claims, the members agreed among themselves, extrajudicially, to arrange, if possible, for the renunciation or withholding of

ing them—Lord Granville absolutely declaring that “an agreement not to press for compensation for these indirect claims is not sufficient, because the arbitrators in that case might themselves proceed to take them into consideration and make them the subject of an award.” How forcible the argument in favor of the claims must have seemed to those who feared that the tribunal would take them up and decide in their favor in spite of the wish of those who presented them! (*Harper's Mag.*, XLV, 925).



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those claims. They persuaded the counsel of the United States to express to its Government the opinion that the claims for indirect damages did not constitute, "upon the principles of international law applicable to such cases, good foundation for an award or computation of damages between nations," and to advise that the tribunal be authorized to exclude them from all consideration in making its award.

For the sake, it would seem, of the political capital to be realized in the next election from a settlement of the Alabama Claims, President Grant accepted the advice of the counsel; accordingly Mr. Fish, by his direction, cabled to Mr. Davis that the indirect claims should be "wholly excluded from the consideration of the tribunal in making its award."

The United States having thus yielded the point, the British argument was presented, and the arbitration proceeded, with the result that on the 14th of September, 1872, the tribunal awarded to the United States, on account of direct claims, including interest, the sum of \$15,500,000 in gold.

Of all the principles of international law, the one preëminently applicable to this case was the fundamental one that treaties are made to be kept. Great Britain and the United States had pledged themselves by the Treaty of Washington to arbitrate the Alabama Claims, both direct and in-

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direct. For political reasons certain members of the tribunal objected to the arbitration of the indirect claims. All agreed that there was no precedent for the arbitration of such claims, and on this ground, with the approval of the Governments of Great Britain and the United States, but without modification of the treaty, the indirect claims were thrown out of Court. Such action was utterly illegal. The lack of a precedent was no bar to arbitration. The tribunal had no need of a precedent. It was convened to make international law, so far as existing law was inadequate. Its failure to arbitrate the indirect claims was due to political interference from both sides; to violation of the treaty by both of the contracting parties.

The Treaty of Washington contained a number of stipulations as to navigation on both sides of the frontier line between Canada and the United States. Among them was the following article (XXVII):

The Government of her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, Saint Lawrence, and other canals in the Dominion, on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of St. Clair Flats canal on terms of equal-

## *The Treaty of Washington (1871)*

ity with the inhabitants of the United States, and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to, the boundary line between the possessions of the high contracting powers on terms of equality with the inhabitants of the United States.

It will be observed that Great Britain guarantees nothing—she only engages to urge certain concessions upon the Dominion of Canada; the United States, on the other hand, guarantees to Canada the use of the St. Clair Flats Canal, whether or not the Dominion of Canada grants the concessions urged upon it by Great Britain; the United States agrees to urge certain concessions upon certain States, independently of any concession made or denied by the Dominion of Canada. It should surprise no one that the United States was made to suffer for entering into such a one-sided agreement. Vessels carrying grain from ports west of the Welland Canal to United States ports east of it were charged a toll of 20 cents per ton on the grain, while no such charge was made if the grain was consigned to Kingston or other Canadian ports.

The fact that the coasting laws of the United States forbade the carrying by foreign vessels of domestic merchandise between United States ports, thus limiting such trade to United States

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vessels, made this grain toll practically a discrimination against United States vessels.<sup>1</sup>

The toll was denounced in our Congress as "an open violation, both of the spirit and letter, of the Treaty of Washington."<sup>2</sup> But it was not shown that Great Britain had in any way failed to keep her agreement. The treaty, literally considered, was not violated. But the discrimination against the United States called for retaliation, and the United States responded without itself departing from the letter of the treaty. Since the conclusion of the treaty, the United States Government had assumed control of the Saint Mary's Falls (Sault Ste. Marie) Canal. To this waterway, as it was not the "St. Clair Flats Canal" nor a lake or river under the control of a state government, the treaty had no application. On the 18th of August, 1892, President Cleveland, with authority from Congress, imposed a toll of 20 cents a ton "on all freight passing through Saint Mary's Falls Canal in transit to any port of the Dominion of Canada." This action had the desired effect. The following February the Canadian Government made the dues uniform on all vessels using the Welland Canal and Saint Lawrence River.

<sup>1</sup> Collector of Customs, Detroit, to Commissioner of Navigation, Washington, June 8, 1888.

<sup>2</sup> Rep. of Com. of Sen., 1st Sess., 51 Cong.

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The Treaty of Washington provided also for the settlement of long-standing fishery disputes between Great Britain and the United States. Certain privileges were accorded by Great Britain to the citizens of the United States, and certain others accorded by the United States to the subjects of her Britannic Majesty. The former were deemed by Great Britain to be greater than the latter. As a consequence, it was agreed that commissioners should be appointed to determine "the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States."<sup>1</sup> One of the commissioners was to be named by the President of the United States, one by her Britannic Majesty, and a third by the President of the United States and her Britannic Majesty conjointly; in case the third commissioner should not be appointed within a period of three months from the date when this provision should take effect, he was to be named by the Austrian ambassador at London.

The agreement to leave an Austrian (under certain conditions) the choice of a member of this proposed board was unfortunate. It might reasonably have been feared that a selection from Vienna would have been

<sup>1</sup> Article XXII.

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prejudiced, as the ambitions of the house of Hapsburg had but recently been frustrated by the United States in the threat to expel Maximilian and his French army from the Western continent. The United States government realized the blunder too late . . .<sup>1</sup>

Great Britain was entitled by the treaty to the advantage of such a selection, provided it resulted from no fault of hers. The agreement, of course, did not justify her in delaying the selection of the third member with the object of having him appointed by the Austrian ambassador. But this is precisely what she did. Finding that the United States entertained objections to Mr. Delfosse, the Belgian minister at Washington, she offered him as her choice.<sup>2</sup> Being requested to name some one else, she did not proceed as the treaty contemplated, to an agreement between her Britannic Majesty and the President of the United States, but through her minister, Earl Granville, wasted time in proposing that the choice be referred to the ministers of Great Britain and the United States at The Hague. Such a departure from the plain provisions of the treaty would, as Mr. Fish pointed out, require the conclusion of a new treaty in constitutional form. By her procrastination, Great Britain threw the selection of the commission be-

<sup>1</sup> *American Diplomatic Questions* by J. B. Henderson, Jr., pp. 514-515.

<sup>2</sup> *Id.*, p. 515.

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yond the end of three months. It was consequently made by the Austrian ambassador and fell upon Mr. Delfosse, the representative of a kingdom that owed its origin to the armed interference of Great Britain and was ruled over until a few years before, by Leopold I, who was the son-in-law of George IV, Prince Regent of England, and the Uncle of Queen Victoria as well as of her husband, Prince Albert. King Leopold II was naturally on the most affectionate terms with Queen Victoria. This selection made two of the three commissioners virtually British. The result of their arbitration is immaterial. The action, or inaction, of Great Britain in this case may be fairly considered as another violation of the Treaty of Washington.

### *General Conclusion*

As far back as 1857 President Buchanan, in his first message to Congress, said:

. . . It has been our misfortune almost always to have had some irritating, if not dangerous, outstanding question with Great Britain.

Since the origin of the government we have been employed in negotiating treaties with that power and afterwards in discussing their true intent and meaning.

Since these words were spoken we have had the Treaty of Washington, with its dispute as to in-

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direct claims, its *quasi*-reciprocal, trouble-breeding provisions as to the use of Canadian and United States canals and as to the "transit trade" through Canada and the United States.<sup>1</sup>

Upon the passage of the Panama Canal Act in 1912, the governments of Great Britain and the United States wrestled over the ambiguities abounding in the Hay-Pauncefote Treaty. This difference as to the canal tolls is not yet settled in principle.

With no other nation have we had so much trouble in understanding our treaty stipulations as we have had with Great Britain. It is an old stratagem of diplomacy for a powerful state, negotiating with a comparatively weak one, to make the terms equivocal, and when the convention is ratified to impose its own construction of it upon the other party. In one of the debates over the Clayton-Bulwer Treaty, Senator Mason of Virginia said (February 20, 1856):

I think whoever has read this correspondence [relative to the interpretation of the treaty] will have been struck with the fact that so far as it was conducted on the part of the American government, plain, ordinary explicit

<sup>1</sup> By this arrangement, which still subsists, goods, wares, or merchandise may go in bond from a point in the United States by way of Canada to another point in the United States, but not from a point in Canada by way of the United States to another point in Canada. (Art. XXIX). It is easy to see how this favors the railroads of Canada at the expense of those of the United States.



## *General Conclusion*

terms were used to express an explicit and plain meaning; and that the meaning of the American government cannot be misunderstood, whereas on the part of the minister who conducted the correspondence on the part of the British government [Lord Clarendon] if you attempt to get at the meaning of England, you will fail and find yourself involved in a maze of confused sentences, indeterminate and vague expressions, in which there is no distinct assertion of title drawn from any distinct source.

The sixth article of the Treaty of 1783 between Spain and Great Britain, considered in our discussion of the Mosquito question, required Great Britain to withdraw from the Spanish continent, "le continent espagnol." This term was understood by Spain to include the Mosquito Coast. Great Britain knew that Spain so understood it. But her plenipotentiary signed the treaty as it stood and her king so ratified it, with the intention of interpreting it as not including that country.<sup>1</sup> Accordingly, Lord Palmerston later declared that "the Treaty of 1783 did not apply [to the Mosquito territory] as that treaty mentioned only the Spanish possessions in America and said nothing about Mosquito."

Referring to the negotiations over the Suez Canal, a French authority says:

At the Conference of Paris [1885] England still preserves her aggressive and distrustful attitude. What

<sup>1</sup> *Anglo-Am. Diplomacy* by M. W. Williams, pp. 21, 22.

## Chapter VI

she fears most is precision. As soon as a question inconvenient to her policy comes up, she seeks to evade it by a reservation or, at most, to give it an equivocal construction, so as to be able later to profit by the uncertainties, if as she hopes, she succeeds in securing to herself the definitive interpretation of the Convention.<sup>1</sup>

In the light of these facts the position taken by certain United States publicists that the meaning of the Hay-Pauncefote Treaty, because it is debatable, ought not to be debated, seems of doubtful sagacity. If we are going to follow that principle, we ought to be more careful than we have been in the training and selection of our diplomats, especially when we have to do with Great Britain. But Great Britain is not to be blamed for making the best terms she can in her diplomatic bargaining. We should admire the ability with which she has overreached us. Let us not waste strength in resenting it, but betake ourselves to learning how she does it.

Diplomacy is to statesmanship what technique is to art; expression to conception; or in war, what tactics is to strategy. Tactics is the execution of strategy. Diplomacy is the execution of statesmanship. Statesmanship, like strategy, is a science, which may be learned, if not mastered, from books. Diplomacy, like tactics, is an art which cannot be acquired without practice. While

<sup>1</sup> *Etude sur le Régime juridique du Canal de Suez* by M. L. Camand, p. 156.

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in statesmanship we have little to learn from Great Britain—not so much perhaps as she has to learn from us—in diplomacy we cannot do better than to go to school to her. We should be thankful that we have not suffered more from our inferiority to her than we have. Senator Hitchcock was right when he said, “We have more to fear from British diplomats than from British dreadnoughts.”<sup>1</sup>

Now to sum up and balance the accounts of the treaty violations committed by Great Britain and the United States against each other. During the one hundred and thirty years between 1783 and 1913, about thirty separate and distinct compacts that may be considered as treaties were concluded between the two powers. Of these thirty treaties, the following eight (about one in four) were violated by Great Britain, several of them in more than one particular:

1. Definitive Treaty of Peace.....	1784
2. Jay Treaty.....	1795
3. Treaty of Ghent.....	1815
4. Rush-Bagot Agreement.....	1818
5. Convention respecting Fisheries.....	1819
6. Convention for Indemnity.....	1823
7. Clayton-Bulwer Treaty.....	1850
8. Treaty of Washington.....	1871

Of these treaties the first, second, fourth, and

<sup>1</sup> Senate Speech, Jan. 4, 1912.

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fifth may be regarded as violated also by the United States, but with possible exception of the fifth, only after violation by Great Britain. No treaty between Great Britain and the United States appears to have been violated by the United States alone.

Regard for treaty rights is not essentially different from regard for other rights. Some idea therefore of the comparative care of Great Britain and the United States for such rights may be formed from a comparison of their records as to regarding or disregarding each other's rights in general. Aggregating the injurious acts done, one to the other, in violation of international law, since the establishment of our Federal Government in 1789, we get, in terms of indemnities awarded, the following account or balance sheet:

<i>Paid by United States to Great Britain</i>	<i>Cause</i>	<i>Paid by Great Britain to United States</i>
\$2,664,000.00	Debts to British Subjects <i>Treaty of 1802</i>	.....
143,428.00	Illegal captures at sea <i>Id.</i>	\$11,656,000.00
.....	Abduction of slaves <i>Convention of 1823</i>	1,204,960.00
277,102.88	British and American Claims <i>Commission of 1853</i>	329,734.00
.....	Alabama Claims <i>Treaty of Washington, 1871</i>	15,500,000.00

## General Conclusion

<i>Paid by United States to Great Britain</i>	<i>Cause</i>	<i>Paid by Great Britain to United States</i>
\$1,929,000.00	Other Civil War Claims <i>Id.</i>	.....
473,151.26	Claims against U. S. <i>Convention of 1896</i>	.....
18,646.20	Pecuniary Claims <i>Hague Convention (1909)</i> <i>Special Agreement of 1912</i>	.....
\$5,505,328.34		\$28,690,694.00

The commission appointed to settle the claims under the special agreement of 1912 is still at work. It has settled ten claims. The last item (\$18,646.20 paid by the United States to Great Britain) was an indemnity for the capture of the British schooner, the *Lord Nelson*, by the United States naval authorities, on the 5th of June, 1812, nearly two weeks before the declaration of war. The vessel was taken by the United States navy, used against Great Britain in the War of 1812, and never returned to its owner.<sup>1</sup>

The other awards of the commission are based on accidental or unintentional injury and therefore not within the scope of this computation.

Considering and comparing the grand totals on the opposite sides of the account, we may conclude that the United States has more than a safe balance of good faith to its credit.

<sup>1</sup> *Am. Journ. of Intern. Law*, VIII, 660.



## APPENDICES





## APPENDICES

### A

CHATFIELD TO THE MINISTER  
OF THE SUPREME GOVERNMENT  
OF NICARAGUA

Legation of Her B. M.,  
Guatemala, Dec. 5, 1850.

The government of Nicaragua having systematically slighted the frequent propositions which have been made to the republic of Nicaragua in the name of Her Majesty the queen of Great Britain, as representing the king of Mosquito, with a view of determining, by means of some formal arrangement the boundaries between the dominions of the aforesaid king of Mosquito and the territory of the Republic of Nicaragua, Her Britannic Majesty has come to the conclusion that the interest and comfort of both parties require that the point should not any longer remain unsettled . . . circumstances require that the general line of the boundaries which Her Majesty's government is disposed to maintain as Mosquito territory should be designated, the government of Nicaragua having refused to enter into a friendly discussion and to appoint commissioners to that effect for settling the boundary line between the two territories. With this view, the undersigned, Chargé d'Affaires of Her Britannic Majesty in Central America, has the honor of informing the supreme government of Nicaragua, that the general boundary line of the dominions of Mosquito runs from the northern extremity of the line which separates the district of Tegucigalpa in Honduras from the juris-

## Appendix B

diction of New Segovia in Nicaragua; and following close upon the northern frontier of New Segovia, runs off from the southern boundary of the district of Matagalpa and Chontales and from thence in an eastern direction as far as the borders of Machuca in the River of San Juan.

### B

PROTOCOL SIGNED BY THE PLENIPOTENTIARIES OF THE  
UNITED STATES AND HONDURAS ON THE 28TH OF  
SEPTEMBER, 1849.

The United States of North America and the Republic of Honduras desiring to secure for the benefit, each of the other and the general good of mankind, the full and perfect enjoyment of the proposed grand interoceanic canal through the isthmus of Nicaragua, and anxious to remove any causes of apprehension that the Island of the Tigre in the Gulf of Fonseca and commanding the same, may fall into the possession of foreign and unfriendly powers, whereby the free transit of the commerce of the world may be obstructed and the usefulness of the contemplated great work impaired; for the accomplishment of these and other important objects, we the plenipotentiaries of the United States and of the Republic of Honduras, have agreed and do agree to the following articles:

Art. I. The republic of Honduras cedes to the United States of North America the Island of Tigre in the Gulf of Fonseca, for the time pending the ratification or rejection of the general treaty between the two republics, this day signed by the plenipotentiaries of the same, provided such time shall not exceed eighteen months.

E. GEORGE SQUIER.  
J. GUERRERO.

## Appendix C

C

1

CLAYTON TO LAWRENCE

Oct. 20, 1849.

. . . . say to his Lordship [Palmerston] that we will gladly enter into a treaty stipulation with her majesty's government binding both nations never to colonize, annex, settle, or fortify, any part of the ancient territory of Guatemala, embracing Nicaragua, Costa Rica, Honduras, and indeed the whole Mosquito Coast.

*Cl. Pap.*,<sup>1</sup> VI, 1188½.

2

CLAYTON TO LAWRENCE

*Private*

Oct. 21, 1849.

If you can procure from England a letter from Lord P. disavowing all intent to colonize or occupy any part of Nicaragua or Costa Rica and agreeing to enter into such a treaty with Nicaragua as ours made by Squier (marked A), it will save us from a collision with her.

If you could also procure from him a letter disavowing all intention to colonize or occupy *any part of the Mosquito Coast* that would be still better.

If you could also procure from him an agreement to guarantee with us the independence and neutrality of Nicaragua, Costa Rica, Honduras, and the whole British Mosquito Coast, that would be better than either of the former.

*Cl. Pap.*, VII, 1205.

<sup>1</sup> *Clayton Papers*, Library of Congress.

## *Appendix C*

### 3

#### LAWRENCE TO PALMERSTON

Nov. 8, 1849.

. . . . I have been instructed by the President to inquire whether the British government intends to occupy or colonize Nicaragua, Costa Rica, the Mosquito Coast (so called) or any part of Central America. I have also been instructed to inquire whether the British government will unite with the United States in guaranteeing the neutrality of a ship canal, railway, or other communication, to be open to the world and common to all nations. . . .

### 4

#### PALMERSTON TO LAWRENCE

Nov. 13, 1849.

. . . Her Majesty's government does not intend to occupy or colonize Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America.

With regard to Mosquito, however, a close political connexion has existed between the crown of Great Britain and the state and territory of Mosquito for a period of about two centuries; but the British government does not claim dominion in Mosquito . . . with regard to the Port of Greytown, at the mouth of the river St. John, Her Majesty's government would fully undertake to obtain the consent of Mosquito to such arrangements as would render that port entirely applicable, and on principles above mentioned, to the purposes of such a sea-to-sea communication.

## Appendix C

5

LAWRENCE TO CLAYTON  
Private and Confidential

Nov. 15, 1849.

. . . You will observe that Lord Palmerston does not positively commit himself in regard to guaranteeing the sovereignty of the Mosquitos. Nor do I intend he shall come to that point. If the British government wishes to be the protectorate of the Indians, there can, I suppose, be no objection, provided they will give up their claim to the territory. I believe Lord Palmerston and Lord John Russell desire to settle this question, but they know not what to do with the Indians. . . .

*Cl. Pap.*, VII, 1292.

6

CLAYTON TO LAWRENCE

Dec. 10, 1849.

. . . The note of Lord Palmerston to yourself of the 13th ult., upon the subject of the Mosquito question, is in many respects satisfactory. . . . Lord Palmerston's offer, however, to obtain the consent of Mosquito to such arrangements as would render the Port of Greytown applicable to the purposes of such a communication is pregnant with a meaning which materially qualifies the other parts of his note. This offer implies that the British ministry persists in regarding the Mosquitos as a sovereign state and that their consent alone is necessary for any arrangements involving the use of the port of Greytown. This government, however, can never acknowledge the independence of the Mosquitos or admit that they have any rights of sovereignty over the port of Greytown or the country adjacent thereto. . . .

*Cl. Pap.*, VII, 1341.

## Appendix C

7

LAWRENCE TO PALMERSTON

Dec. 14, 1849.

The occupation of Greytown and the attempt to establish a protected independence of Mosquito throw at once obstacles in the way, excite jealousies and destroy confidence, without which capital can never flow in this channel . . . the undersigned can discover no cause that will insure the accomplishment of this great work except the extension of Nicaragua from shore to shore, including of course, the dedication of Greytown to the purposes of the canal, which Her Majesty's government have already expressed a willingness to do. . . . The undersigned has therefore the honor to inquire of Viscount Palmerston whether Her Majesty's government are willing . . . to let the protectorate of the Indians pass to other hands under proper checks and guards for their humane treatment and let such parts of the territory (said to be occupied by them) as may be necessary be dedicated to this great work.<sup>1</sup>

8

BULWER IN QUARTERLY REVIEW

(Vol. XCIX) 1856

In the foregoing correspondence, dominion is disowned—close political connection is asserted. What was that close political connection? The humane protection of those Indians from aggression and such aid towards civilizing and christianizing them as the advice of a superintendent at the councils of their chief might afford—in short the connection distinct from dominion, *then actually*

<sup>1</sup> To this inquiry no answer was received. About this time the negotiations were transferred to Washington.

## Appendix C

*known to exist.* What then do the negotiators?—they take the very question of the American minister—they take the very answer the question receives from the British government, as the guide and groundwork of their own negotiation—they shape those words into a clause of the treaty, and they define the political connection with the Mosquitos claimed by the British government as distinct from dominion, by saying, that neither Great Britain nor America will make use of any protection either state affords—any alliance either has or may have with any people, to fortify, occupy, colonize, or exercise dominion in Central America.<sup>1</sup>

The Clayton-Bulwer Treaty was thus purely commercial. It was not framed to settle the Mosquito question, but to prevent the Mosquito question being an obstacle to the completion of the American canal.

The protectorate is admitted, its continuance is admitted. You shall not make use of the protection you afford or *may* afford, to do so and so: words that imply a right that might be possessed then, and a right that might be assumed hereafter . . . occupation in the territory of another power has invariably a military or imperial significance. . . . But take the word according to its plain sense, in “Johnson’s Dictionary”—to “occupy” is to possess or rather to take possession. In neither sense of the word, diplomatic or familiar, did we occupy the Mosquito territory at the time of the treaty, nor do we so occupy it now [1856] . . . Do we

<sup>1</sup> In a letter, Sir Henry wrote from Rhoda-on-the-Nile, February 17, 1872: . . . “when I had to make a treaty with them [Americans] I took the trouble of going over all their old treaties, and in important passages, I only used such words as they had used, in the sense in which they had used them. Then when they began their usual disputes about interpretation, I quoted their own authority.” (*Biog. and Critical Essays* by A. Hayward II, 328.)

## Appendix C

occupy it by military garrison? Certainly not. Do we assume dominion over the Indian King? So much the contrary, that we compel the few English who are in the territory to acknowledge his sovereignty, and it is the very acknowledgment of his sovereignty of which the Americans complain. . . .

9

CLAYTON TO BULWER

*Private*

Jan. 1, 1850.

. . . your draft of the proposed convention is herewith returned . . .

*Cl. Pap.*, VIII, 1423.

10

BULWER TO CLAYTON

Sunday

[Feb. 3, 1850] Rec'd 3 p.m.

I enclose you the draft [of the Treaty] as amended according to your desire.

I have added an article [Article 7] at Mr. White's<sup>1</sup> desire and as I understood him, at yours. It can stand or not as you desire . . . H. L. B.

*Finis coronat opus!!!*

*Cl. Pap.*, VIII, 1472.

<sup>1</sup> Probably J. L. White, a member of the *Pacific and Atlantic Canal Company*, organized for the construction and operation of the canal. Its other members were Cornelius Vanderbilt, N. H. Wolfe, E. H. Miller, Messrs. Rawden, Grossbeck and Bridgham (a firm), Hoyt and Heney (*do.*), Livingston, Wells and Co. (*do.*), and O. L. White.



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11

CLAYTON TO BULWER

*Private & confidential*

1/2 past 4 p.m.

Feb. 3, 1850.

I have inserted in pencil a few words in the draft on the 4th page "or assume or exercise any dominion over the same." See Lord Palmerston's dispatch to Mr. L. He disclaims expressly any British dominion. We will do the same. Keep the words.

JOHN M. CLAYTON.

P.S. If the draft is disapproved by Great Britain, it is understood between us that it never was made or thought of.

*Cl. Pap.*, VIII, 1474.

12

CLAYTON TO BULWER

*Draft (Private and Confidential)*

Feby. 11, 1850.

. . . Our *projet* [of a treaty] signed by us on the 3rd, which is to be considered as "having never been made" in case our governments do not approve it, did in my opinion, bind both parties not to occupy—that is, take or keep possession—and I did not believe nor do I now believe that Great Britain would have ever violated the plain meaning of the word by sending a force to enable the Mosquito King to drive off the Nicaraguans and keep the possession by British arms, under any other name. Others differ with me and insist that Great Britain shall plainly say "we abandon the protectorate every way." Could the United States under our *projet* have sent an armed force as the ally of Nicaragua to occupy for her

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the town of San Juan without violating the whole spirit of the treaty? Construing our words to have a fair and honest meaning I thought and still think them sufficient.

But what objection can your government make to explain our words and exclude, by the explanation, any unjust inference. I have said to you that, without such an explanation, our *projet* is to be held as never having been made. Pending our private negotiations, without instructions on either side, I had no opportunity of consulting the President or his cabinet and they were, as I informed you, entirely ignorant of our doings or intentions, and now, having consulted them, as soon as I properly could, I have held it a duty to apprise you frankly and without a moment's delay, of the futility of our labors. You seem to think the explanations required impossible. Then let the *projet* we drew up be considered as having never been made, according to our written agreement. The failure is our private and personal misfortune, but not the fault of either of our governments.

Endorsed

. . . I do hereby certify that the within is the original draft of a private note addressed by John M. Clayton,, Secretary of State, on the 11th day of February, A. D. 1850, to Sir H. L. Bulwer, from which I copied the letter which I know was sent to Sir Henry on the same day and further that the written draft was copied verbatim. . . .

Washington, March 6, 1856,

GEO. P. FISHER.

*Cl. Pap.*, VIII, 1481.

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13

BULWER TO CLAYTON

Feb. 14, 1850.

. . . My opinion undoubtedly is that the project of convention that we sent to England satisfied the honor and interests of both parties. If your cabinet however entertain any doubts upon this matter, I have no wish to urge a contrary opinion upon you, but at all events, it would be desirable to know clearly what are the difficulties that exist in order that all parties may as soon as possible devise the best means (if means there be) for meeting them. "One never goes so far as when one does not know where one is going." Our *govt* is bent, as I have frequently assured you, upon doing everything which is honorable & decorous, in order to maintain the most friendly relations with this country and to promote a work of general interest to commerce and civilization.

Do not ask from us anything which we cannot grant without sacrificing some portion of that character which, after all, it is for your honor and dignity to maintain unimpaired, because it is the character of your fathers. Concessions of this kind we can never make to any power upon earth, nor would we ever like to see you make them.

Now let me place before you the question as it presents itself under existing circumstances. We in consequence of old engagements, took part with the Mosquito people against the Nicaraguans and put the former in possession of a territory which we thought belonged to them; we were, not in this, doing anything hostile to you; you had at that time no peculiar relations with the Nicaraguans, and we could not suppose that you would take any part in the quarrel;<sup>1</sup> but if after this you make a

<sup>1</sup> One might think that Bulwer had never heard of the Monroe Doctrine.

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treaty with the Nicaraguans recognizing their claim and agreeing to support their claim, may I not say that you commit knowingly an act of hostility towards us? What would you have said for instance, if we, during the pending dispute between you and Mexico, had made a treaty with Mexico, receiving from her a grant within the boundary which you and she both claimed and agreeing to support her pretensions? The cases are nearly parallel, because though the Mosquito territory is not claimed by us we are, after what has passed, as much compromised in the Mosquito claim as you were in the Texan; and, after all, for what reason would you seek a quarrel with us? for the sake of the canal? We will do everything to favor it that you can desire; any proposition for this object, to construct the said work, to protect its neutrality when made; to deliver ourselves from the imputation of seeking selfish and exclusive advantages therefrom, I will submit to Lord Palmerston with readiness and pleasure; but I am sure you will perceive that a proposal couched in any form, to take the territory in question from the Mosquitos, and to deliver it up to the Nicaraguans would not be a proposal that we could creditably accept. Moreover such a proposal will have this peculiar character, which is anything but an impartial one, it would be taking a possession from a people who had been for centuries under our protection, and who have never given you any offense in order to make it over to another people whom you have recently taken under your protection,<sup>1</sup> and who by their language and proceedings towards us of late have assumed a position of almost quasi hostility.

I wish you, my dear Sir, would think well over the contents of this letter, so that it may lead to some result

<sup>1</sup> To this point dictated or copied by an amanuensis. From here on in the handwriting of Sir Henry Bulwer.

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previously to the departure of the next packet. Let me, at all events, then be able to develop clearly what the views of your cabinet (if they differ from those contained in our project) really are. May I beg you, tho' this letter is but a private one (since I am anxious to avoid any public controversial correspondence), to lay it before your colleagues, and if I am not taking a liberty in such a request, before the President, with whom, were it agreeable to you and to him, I should be most happy to converse on the subject, which at this moment is so near our thoughts. . . .

*Cl. Pap.*, VIII, 1490-1493.

14

CLAYTON TO BULWER

Read to Mr. Bulwer, but not sent to him.

*Private and confidential.*

Feb. 15, 1850.

. . . . .

I agree with you that "it would be desirable to know clearly what are the difficulties that exist, in order that all parties may, as soon as possible, devise the best means (if means there be) for meeting them." The chief difficulty, and the only one which I have not yet been able to overcome, is to be found in the assertion by your government of the Mosquito title. Your Government does not understand us. So far from seeking a quarrel with Great Britain the President has been studious ever since he came into office, to awaken your Government to the danger to both of us of an approaching quarrel. The Mosquito question was first introduced into the Congress some years ago, by a Senator from New York and it has attracted attention through the country ever since. The deepseated conviction of this

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nation now is that the British expedition in the name of the Mosquito King, against the State of Nicaragua was unjust and in direct opposition, not only to what we call the Monroe Doctrine, reiterated by Mr. Polk, the late President, that no European power shall interpose in the affairs of the American republics, but to the settled doctrine of the English law, applied by England and the United States to all savage tribes, than [*sic*] an Indian title is but a title by occupancy, liable at all times to be "extinguished" at the will of the discoverer of the country. We have applied this doctrine to perhaps a hundred Indian tribes. We were taught it by England. She applied it in America, in all cases. It is true, sound, Anglo-Saxon doctrine, repeatedly sanctioned by the judges of the Supreme Court of the United States, who have on all occasions expressly declared that they derived the law from England and English precedents. Nothing could shock the American people more than the repudiation of this doctrine. They cannot understand how it can be contested by Englishmen or Americans. Were England now to claim the protectorate in virtue of an ancient alliance made two hundred years ago, with the Wyandots, the Shawnees, the Root-diggers, the Blackfeet or the Flatheads of the West or with the Seminoles and their chief, Billy Bowlegs, such a pretension would not astonish them more. Your East Indian princes held a different title. They were sovereigns and were recognized as such by England, but no American sachem or chief within the limits of the United States or British America was ever regarded as having any other title than that of mere occupancy, to which the discoverer had a right of preemption, we call a right of extinguishment. The Spaniards were not as just as our ancestors towards the Indians. They did not acknowledge even an Indian title to occupancy which

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they were bound to pay for before it could be extinguished.

Now do not be alarmed! I am not going to inflict upon you the sayings of any writer on the law of nations or of any American judge, or even of those English judges whose great names are held in veneration, not only in yours, but in my country. I have never thought your Mosquito title legal or valid. But without taxing your patience, I will ask your indulgence to permit me to say to you, as I now do, with equal sincerity and good feeling, that I have forborne to discuss it with you, because I thought it unnecessary, when two such nations were attempting to negotiate for the accomplishment of the greatest work of the age, that they should quarrel about such a pretension. My great respect for the British government restrained me, and I have sought to appeal to the magnanimity and philanthropy of England, in such a way, as should not awaken even a suspicion on her part, that we thought of dishonoring her; and it has been my wish to prevent such a question from being made a topic of public discussion in the Congress of the U. S., because I sincerely desire to strengthen the ties of respect and amity between the two countries.

Our war with Mexico commenced in May 1846. In the latter part of 1847 we negotiated with Mexico for the purchase of California and New Mexico, and in February 1848, we made a treaty with Mexico at Guadalupe for the cession of those territories. The Nicaragua route presented us the only chance for a ship canal, a railroad or any other road or passage across the Isthmus, and at the very moment of the purchase we were struck with surprise by the seizure on the part of Great Britain, in the name of the Mosquito King, of the only outlet for such a canal or passage.

The territory in the vicinity of the San Juan River was of little value to England. The Nicaraguans were in

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peaceable possession of it. The Indians were a miserable race, syphilitic and leprous and but few in number. Their tribe is believed to be more degraded than any other on the whole American continent. I am assured that by the laws of Nicaragua, it is death to intermarry with them on account of the hereditary diseases to which they are subject. But a few years can elapse before the whole race will probably be extinct. Their speedy annihilation is believed to be certain from causes which you and I perfectly understand, and especially the advance of the white man and the rum bottle. Our advices from that quarter are that there are not two thousand of them now on the whole Mosquito Coast and that between Blewfields and San Juan Rivers there are but 480 men, women, and children, and they are constantly decreasing in numbers. Now I never knew two sensible men [to] fight about a blue-bird's skin, and I think two sensible nations, such as Great Britain and the United States conceive themselves to be, should have more brains than to expend life and treasure in a contest with friends and kinsmen about these miserable Indians, and especially if we find on examination that they will be quite as well taken care of if we let them alone. Could England lose anything by abandoning those Indians? Could England possibly lose anything by omitting to assert their title, for the purpose of constructing a work worth more to her and us than a thousand times the value of the whole Mosquito Territory?

But you ask me, "Why do you seek a quarrel with us"? I answer we do not; and but for our recent acquisitions on the Pacific, we might have slept in stupid indifference to the whole project of connecting the two oceans by a ship canal or other means of passage, an indifference which has been a disgrace to the great civilized nations of the earth for a hundred years. Now in the middle of the nineteenth century we Yankees have found



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out that this canal or some other passway must be made and that there is but one spot yet discovered where such a passage as we want can be had. We went there to look at it, and we found that you had taken possession of the outlet of it at the very moment when it became indispensable to us. This seemed to us to be unkind, but we did not want to make a quarrel of it. We examined the title and found, as we at least thought, that you had acquired none and we resorted to what we think was the rightful authority to give us permission to make the canal. We obtained that permission and we immediately determined to offer you and all other nations equal advantages with ourselves in case we should make it, but we asked you, in the kindness of friends, not to interrupt it, not to control or command it, but to leave it open for the benefit of the human family—we, your descendants being among the number.

Now you seem to think that you alone are called upon to make a sacrifice of something for an object in which we shall gain equal advantages with yourselves. You are greatly mistaken. There is not one of these five Central American states that would not annex themselves [*sic*] to us tomorrow, if they could; and if it be any secret worth knowing, you are welcome to it—*some of them have offered and asked to be annexed to the United States already.*<sup>1</sup> Your government could not annex one of them with its own consent and in the face of these facts, we offer to agree with you that we will not occupy (or interpose to exercise any influence over) [any of them] if you only consent to give up your alliance to your Mosquito King. . . .

In the experimental project [of a treaty] which you and I have drawn [up] and sent to England, it is proposed that neither nation shall occupy, fortify or colonize. Had our respective governments agreed upon that,

<sup>1</sup> Castellon to Bancroft, July 12, 1849.

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then suppose Great Britain to send down a fleet to San Juan to occupy or interpose for the Mosquito King as his ally and protector; by the same rule we as the allies of Nicaragua, could send another fleet and would be bound to do it to help Nicaragua; for we have quite as good a right to defend Nicaragua as you have to defend the Mosquito Indians; and with every possible respect for those who entertain a contrary opinion, I think our interference would be justifiable on much better principles. Nay we should be disgraced if we did not interfere.

The Nicaraguan chargé has been, you know, in Washington. Everybody here who has chosen to inquire of him knows that the Central American Republics are ready for annexation to the United States, if we would admit them. I am not like the farmer who wanted no outside row to his corn field; but on this subject of annexation, as My Lord Coke sayeth "*Note a diversity.*" Your Anglo-Saxon is everywhere like his ancestors more than 1700 years ago, "*capax, pugnax, rapax.*" The disease is hereditary with us, and for that reason our fathers will more readily excuse us. I shall never whisper this, my private opinion of our and your peculiar qualities in the ears of any one but an American or an Englishman. Fitch in the Beggars Opera said "he would not willingly forget his own honor by betraying anybody" *Que cum ita sint.* Do you not plainly see that in agreeing with you to restrain our appetites, I am entitled to more credit for the virtue of abstinence than even yourself. In sober earnest do you not feel that in making an arrangement with you, by which both our countries should be restrained from any influence or control over the Central American states, we [Americans] are making that concession which commits us more against public opinion in America than it commits you against public opinion in England?

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I understand your title, and if you desire to enter into an argument with me on the subject, I will pledge myself to lay it before an English audience and show that your pretension of a rightful alliance with the Mosquito Indians, for two hundred years or for any other period is an error. But suppose I succeeded in such a controversy, should I gain anything more by it than by a frank appeal to British magnanimity and British philanthropy? When we invite Great Britain to follow us in the progress of commerce and civilization, her mighty spirit will, I trust, prompt her to lead, not merely to follow. You know I would have trusted you [the people and government of Great Britain] upon the project of a treaty which you and I drafted. Wiser men think the Senate would refuse to ratify the treaty without an extinguishment of the Indian title in Central America, and that though anxious for a friendly settlement of this question with England, they will refuse to bind us [Americans] by treaty not to occupy, fortify, colonize, or exercise dominion, over Central America, unless England will submit to what they consider a much smaller sacrifice by abandoning the whole British alliance with the Mosquito King.

I have written to you, my dear Sir, as you wrote to me, a private and confidential letter. I have shown your letter confidentially to the President, as you requested. He expressed himself in the kindest manner towards you and your government, but he is deeply impressed with the conviction that, unless Great Britain can abandon the protectorate, we cannot abandon our alliance with Nicaragua. We must and shall attempt to make the canal.

The result of it all is that we shall vindicate the Nicaragua title in the least offensive way we can, towards your government; and whenever you shall be ready to extinguish the Indian title south of Balise [*sic*]

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River or to abandon the protectorate of it south of that river, we will agree with you not to colonize, fortify, occupy or exercise dominion over, any part or all of Central America. If you refuse to extinguish that Indian title or to abandon the protectorate, we shall hold ourselves at liberty to annex any part of the Central American States or to make any other contract with them which our interests may dictate. The President thinks we make by far the greatest concessions. If you refuse to abandon the protectorate now set up at Blewfields and San Juan, [to abandon it] for the sake of the canal, thus retaining an influence over other nations in the vicinity of the work, you may break up the enterprise and create an excessively bad feeling between our respective countries.

Nicaragua ought to be held the rightful proprietor of the country in dispute, with this limitation, that all private titles to lands made between March 1848 and this time shall be good and valid. When you abandon the protectorate set up by you and not recognized by us, or extinguish the Indian title, then let Mosquito and Nicaragua settle the difference between themselves, without our interference; but if you will interfere to assist the Mosquitos, we must and shall interpose in behalf of Nicaragua. Such are the President's instructions to me. If our project of a treaty had been adopted, the result would have been the same, as I have already stated.

I am, my dear Sir,

Sincerely yours

### MEMORANDUM

This note [February 15, above] was written in reply to Sir Henry's PRIVATE NOTE to me of the 14th of February, 1850. When about to send it to him next evening, he came to my house, and I repeated its contents to him in

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a conversation and then read it over to him. He said it was unnecessary to send it as he fully understood me and asked me not to send it. Its tone of pleasantry and frankness, which possibly might be held offensive, induced me to comply with his request, especially as I sometimes objected to and declined, receiving some of his private notes. It is therefore preserved as an accurate record of conversation with H. B. M.'s minister on the night of the 15th of February, 1850.

JOHN M. CLAYTON.

*Cl. Pap.*, VIII, 1496-1501.

15

BULWER TO CLAYTON

[Marked *Private* on Envelope]

February 17, 1850.

I am willing to transmit to Lord Palmerston any proposal from you, the consideration of which you state to be necessary for the preservation of peace and a good understanding between the two countries. But I can only engage to recommend what is according to the letter and spirit of the instructions I have received, or what appears to me a perfectly fair and beneficial termination of the difficulties which have arisen.

In this spirit I have already recommended what has lately appeared to both of us all that was necessary for the great and primary object, out of which the question under agitation grew up; *i.e.* the construction and protection of the projected ship communication across the Isthmus.

The nature of your suggestion of yesterday is that we should withdraw our protection from the territory claimed by the Mosquitos within one hundred miles of the River San Juan and that neither of us should in-

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terfere with whatever may occur with respect to this territory.

You would then, I understood you to say, lay the treaty made by Mr. Squier before Congress, which treaty recognizes the claims of the Nicaraguans over the whole line of communication which it is intended to establish. What follows? Either the Nicaraguans go back to maintain themselves in the territory in question under the declaration from you that it is their rightful property, we having withdrawn therefrom the Mosquitos whose rightful property we declared it to be, or the spot in question which it is our desire to preserve for the object of commerce, in tranquility and peace, become the scene of confusion and war between a variety of belligerent claimants or a center for any collection of persons, whatever their pursuits or character, that may therein assemble, without our having the power to establish safety, law, or order over the same.

I cannot, indeed, undertake to recommend this plan as the best that can be proposed, either for fairly settling the Nicaragua-Mosquito claim or for providing for the safe construction of, and uninterrupted passage through, the canal which we have in view.

I will, however, I repeat, make this proposal from you to Lord Palmerston, if you desire it. But if you wish this, or if you wish—because I cannot recommend the said proposal—to withdraw, according to an intention which you seemed to indicate, your sanction to the arrangement which has been already transmitted to England, I would then beg of you to state thus much by a few words in writing, since such an authority would be required to contradict the contents of a document which has our signatures and which is now under consideration.

I trust, however, that taking advantage of the friendly

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feelings that subsist between us, you will allow me here-upon to make two or three observations.

It seems to me perfectly natural that your colleagues should not desire you to give me any opinion of theirs as to what has taken place, until I can state what is the opinion of my own Government. But I confess to you that it appears to me that you can not in your own name withdraw with propriety or essentially alter the project signed by you; and indeed that neither of us can propose any alteration therein, I to your Government or you to mine, except when we are able to state that we do so on account of the opinion of our respective cabinets; and that consequently no farther formal step can be taken in this matter until Lord Palmerston's answer arrives.

I may, however, in the meantime make to him, and you to your colleagues, any representations that we think calculated to promote the ultimate result which we must equally desire.

Yours my dear Sir,

Very sincerely,

*Cl. Pap.*, VIII, 1509-1511.

16

CLAYTON TO BULWER

February 18, 1850. 10 o'clock P. M.

. . . I have at present no hope of success if your Government refuses to withdraw the Mosquito claim from the country south of Bluefields River, while we are called upon to abandon all Central America. Your Government must act speedily, if at all. If our project of a treaty should fail in spite of all our efforts, let it then be buried in oblivion according to our written agreement. To prevent a controversy I have done that with you

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which I will never do with any minister again—tried to make a treaty, without instructions.

*Cl. Pap.*, VIII, 1512-1513.

17 .

BULWER TO CLAYTON

[Feb. 18, 1850.]

I send you my letter for Lord Palmerston which in case you write to Lawrence announcing this change, send; but, if not, keep back my letter; because I feel [that] by sending anything of the kind and thus playing fast and loose, we risk, and this essentially, all chances of coming to a happy arrangement at all. What can a Government think of a negotiation thus varied within a week? Moreover, the idea of our ceding the territory to Nicaragua, is after all, "Moonshine"; the suggestion of such a pretention is little short (between ourselves) of a positive declaration of war. You must see all this as well as I do.

Yours very sincerely,

H. L. B.

Sunday.

*Cl. Pap.*, IX, 1676.

18

CLAYTON TO BULWER

April 6, 1850.

*Draft* [of note]

Nothing in this treaty, should it be entered into by the United States, shall be construed to be an admission on the part of this government, of any right or title whatever in the Mosquito King, to any part of Central America or of what is called the Mosquito Coast. The



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British government has long been fully aware that this government has denied the title claimed for the Mosquito Indians and of the fact that the United States had negotiated a treaty (now before the senate) recognizing the title of Nicaragua over the line of the canal.

### *Private*

I have taken great pains to find out on what terms our project of a treaty can pass the senate.

The President and the cabinet have arranged the foregoing note of this date, which is addressed to you by me after full consideration. This note is deemed by the President indispensable to define his position before signing the Treaty. He will not suffer it to be signed on any other terms.

I am well satisfied after diligent inquiry that without this note, the treaty could not possibly pass the Senate. It would be useless to attempt to negotiate further on any other terms. You can now notify me of the time when you will be ready to exchange powers and sign, and I will immediately prepare to receive you.

*Cl. Pap.*, VIII, 1594.

19

BULWER TO CLAYTON

April 7, 1850.

I should have no insurmountable objection to your note, if it stopped at "Mosquito Coast," but if you mean to inform me officially at this time that you intend to recognize by treaty the rights of Nicaragua over the Mosquito territory, this seems to me so unnecessary and unprovoked an act of hostility . . . that I could not seem to be indifferent thereto in my reply, or appear to think otherwise than that you had incurred the respons-

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ibility of breaking off at this last moment, and in no kindly manner, an arrangement conducted throughout by me, and hitherto by both, in the most friendly spirit.

*Cl. Pap.*, VIII, 1601.

20

CLAYTON TO BULWER

*Private and Confidential*

April 8, 1850.

. . . The President cannot conceive how the assertion of the simple fact in my last official note to you that this Government, by the Squier treaty, recognized the sovereignty of Nicaragua over the line of the canal could be offensive to your Government. It was made known to Lord Palmerston before you came to this country.

. . . We have never sought to conceal it. . . .

I am but the organ of the President and declare his views to you, and he himself is compelled to negotiate with a view to the opinions of those who share with him the treaty-making power. . . . If you say that your object in making the treaty was to compel us to deny the Nicaragua title then we may as well abandon the negotiation.

. . . . .  
P. S. Rely on it, I send you the Prest's ultimatum.

*Cl. Pap.*, VIII, 1603.

21

BULWER TO CLAYTON

Private and confidential

Apr. 9, 1850.

. . . . If you think it absolutely necessary to state civilly and quietly that it is not understood by you in

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our treaty that you recognize thereby the title of the Mosquitos, I shall not on that ground refuse to sign our treaty and, if instead of stating in your treaty with Nicaragua, that you recognize the claim of Nicaragua over the Mosquito Territory, you state that you will do your utmost to obtain by good offices for her a satisfactory settlement of the differences which have arisen between her and Great Britain with respect to the said territory, I do not think that under existing circumstances, this would be greatly objectionable, even if it were not agreeable. . . .

*Cl. Pap.*, VIII, 1610.

### 22

#### BULWER TO CLAYTON

18 April, 1850.

. . . . It is no use our trying to get round each other and it is in neither of our characters. . . . The Eng. Gov. are disposed to do everything they can with honor, but cannot with honor abandon [their] defensive protectorate of Mosquito as long as the obligations binding them thereto are not solved by the Mosquitos, nor if there be any threat held out to them on this subject. Anything short of this I have always bad you to [*sic*] O. K. and I now agree to all you have asked, although I deem that your informing us you don't recognize what we don't ask you to recognize [Note of Ap. 6, 1850] is unnecessary [and] will for various reasons be inexpedient. . . .

*Cl. Pap.*, IX, 1634.

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23

CLAYTON TO BULWER

*Private and confidential*

Retain copy  
April 19, 1850,  
11 o'clock P. M.

The treaty signed by us today which, when ratified, will prevent the occupation or annexation of Central America or the Mosquito Coast to either of our governments, as we understand it, will make it an imperative duty to be performed by us, to use our good offices to settle speedily all questions of territory between the small governments of Central America. We are both debarred from governing. Anarchy and war between the people of that region will probably soon ensue, if we neglect this subject.

*Cl. Pap.*, IX, 1650.

24

CLAYTON TO LAWRENCE

Draft

May 12, 1850.

I hope . . . that the Brit. Ministry will have the good sense, after the ratification of the treaty, to consent that Nic<sup>a</sup> shall extinguish the Mosq. title. . . . I can see no other way of bringing the country adjoining the canal under our government, which all nations could recognize, without a sacrifice of opinion on the part of any.

*Cl. Pap.*, IX, 1708.

25

LAWRENCE TO CLAYTON

June 7, 1850.

. . . The Treaty will be ratified [by Great Britain],

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but with a lingering feeling toward maintaining the rights of the Indians to the Mosquito territory. *You* must arrange the details in regard to a supplemental Treaty with Sir Henry. . . .

*Cl. Pap.*, IX, 1725.

26

### GRANVILLE TO CRAMPTON

Feb. 20, 1852.

It would appear as if the United States government considered that, from the moment of the conclusion of the convention of the 19th of April, 1850, Great Britain had renounced all right to interfere in the affairs of Greytown and the Mosquito Country, and engaged to relinquish that place and country to the state of Nicaragua.

Her Majesty's government cannot admit such an interpretation of the convention of the 19th of April, by which, as understood by Her Majesty's government, Great Britain is not precluded from protecting the Mosquitos, but is only restricted from occupying, fortifying, or colonizing, or of assuming or exercising any dominion over, the Mosquito coast or any part of Central America.

27

### CLARENDON TO CRAMPTON

May 27, 1853.

. . . nor has Great Britain renounced by the Treaty the protection which she has for centuries past afforded and still affords, to the Mosquito territory . . . if either Nicaragua or Honduras were still to continue to make aggressions on the Mosquito territory with that object, it must be at their own peril.

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28

MARCY TO BORLAND

Dec. 30, 1853.

You will regard it [the Treaty] as meaning what the American negotiator intended when he entered into it, and what the Senate must have understood it to mean when it was ratified, viz: that by it, Great Britain came under engagements to the United States to recede from her asserted protectorate of the Mosquito Indians, and to cease to exercise dominion or control in any part of Central America. If she had any colonial possessions therein at the date of the treaty, she was bound to abandon them and equally bound to abstain from colonial acquisitions in that region.

29

REVERDY JOHNSON TO CLAYTON

Dec. 30, 1853.

. . . our government had no motive and no desire to prevent Great Britain from performing any of the duties which charity or compassion for a fallen race might dictate to her, or to deprive ourselves of the power to interfere to the same extent in the cause of humanity. . . . But we did intend (and the treaty contains everything for that purpose that could be desired) to prevent the British government from using any armed force without our consent, within the prohibited region, under pretext or cover of her pretended protectorate. . . . The moment Great Britain threatens with arms to defend the Indians, and claims a right to do so in virtue of the treaty, we may claim by the same instrument, with equal justice, the right to take arms in defense of Honduras and Nicaragua.

. . . . .

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I remember well that you steadily refused every effort on the part of Sir Henry to induce you to recognize the title of Nicaragua or any other Central American state, and left the British government the right to recognize the title of the Mosquito King. On these points the parties agreed to disagree. But the right to recognize is a very different affair from the right to compel others to recognize. The British protectorate was, I repeat, entirely disarmed by the treaty. How is it possible for Great Britain to protect if she cannot occupy, or fortify, or assume any dominion whatever in any part of the territory? She is equally prohibited, in my opinion, from occupying for the purpose of protection, or protecting for the purpose of occupation. If she observes the treaty, her protectorate stands (as you once well said in a diplomatic note) "the shadow of a name."

30

CLARENDON TO BUCHANAN

May 2, 1854.

"Colonize, fortify, occupy, and assume or exercise dominion over," is there any of these terms which excludes the right of protection, although each of them limits its capability? Defending or protecting is a temporary act of friendship; occupying, colonizing, fortifying, or acquiring sovereignty are acts which have a permanent result.

31

BUCHANAN TO CLARENDON

July 22, 1854.

The government of the United States . . . stands upon the treaty which it has already concluded, firmly believing that, under this, Great Britain should more than four years ago, have ceased to occupy or exercise dominion over the whole and every part of the Mosquito coast.

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32

CLARENDON TO BUCHANAN

Sept. 28, 1855.

[The Treaty] was merely prospective in its operation and did not in any way interfere with the state of things existing at the time of its conclusion. If it had been intended to do so, there can be no question but that in conformity with what the undersigned believes to be the universal rule in regard to instruments of this nature, it would have contained in specific terms a renunciation on the part of Great Britain of the possessions and rights which up to the conclusion of the convention, she had claimed to maintain, and such renunciation would not have been left as a mere matter of inference.

33

BUCHANAN TO CLARENDON

October 4, 1855.

It appears to the undersigned that an engagement by a party not "to occupy or exercise any dominion" over territory of which that party is in actual possession, at the date of the engagement is equivalent in all respects to an agreement to withdraw. Under these circumstances, this is not "a mere matter of inference"; because the one proposition is necessarily and inseparably involved in the other, and they are merely alternative modes of expressing the same idea. In such a case, to withdraw is not to occupy,—and not to occupy is necessarily to withdraw.

34

BUCHANAN TO MARCY

Nov. 9, 1855.

[Clarendon said]—about these Central American



## Appendix C

questions—"the best mode of settling them is arbitration"—I replied there was nothing to arbitrate. He said the true construction of the Treaty was a proper subject for arbitration. I told him I did not consider it a question for construction at all—the language was plain and explicit, and I thought this would be the almost unanimous opinion of the American people.

35

### SEWARD IN SENATE

Dec. 31, 1855.

. . . . the British government is now stated by the President to assume the ground that the stipulation not to colonize or to occupy was prospective only and not present or actual. That strikes me as being a new suggestion, a new idea, entirely different from that which I entertained as a member of the Senate when that treaty was ratified and when I defended it.

. . . . there was a criticism made upon the language of the treaty, in regard to *occupation*, *colonization*, and *dominion*. The suggestion was barely made that there might be an equivoke in that treaty; and the moment that it was made, I remember, the article was read, and every honorable member of the Senate agreed that it was impossible that a doubt could ever be raised on that question.

36

### CLAYTON IN SENATE

December 31, 1855.

. . . Prospective in its operation! I never dreamed of such a thing. Merely prospective! Does any man suppose that I, in the possession of my senses, could have entered into a treaty with Great Britain to allow her to

## Appendix C

remain in possession of the whole of this isthmus, and to prohibit my own countrymen from taking possession of it, leaving her there undisturbed? . . . They were not to exercise dominion thereafter, but they were to exercise the dominion they had before. How can that be? The language of the treaty was that they should thereafter exercise no dominion, and no matter what dominion they might have had before, they were compelled by the plain terms of the treaty to abandon it.

Sir, it is wonderful that a nation so enlightened and of such standing in the world as the people of Great Britain should have consented to permit any ministry to stand in a controversy upon such points as these. I do not believe the British people understand their position. I know that Lord Palmerston has heretofore carried things there with a high hand; but I think that when the British people do understand that they are to be degraded and disgraced by such miserable quibbling and equivocating as this they will turn their backs on Lord Palmerston and his cabinet, and any other set of men that have such an estimate of what is due to British honor. I do not believe Englishmen have sunk so low. Depend upon it, there is some misunderstanding among Englishmen on this subject. It is impossible that the people of England can comprehend it. If they do, they will not suffer such miserable special pleading to dishonor them, and force us at last into open war with them.

37

FOOTE IN SENATE

February 15, 1856.

It was understood by the committee; it was understood by the Senate; it was understood by every member of the Senate, I venture to say, that the effect of the treaty

## Appendix C

was such as to impose upon England the obligation forthwith to resign all her possessions in Central America; and with that understanding, and upon that alone, the treaty was ratified. I submit to any Senator here, then a member of the body, if it be not so [A general assent was signified]. The only question which afterwards arose was whether or not it embraced the British settlement at the Belize?

*Append. Cong. Globe*, Feb. 5, 1856, p. 83.

38

### CLAYTON IN SENATE

June 19, 1856.

. . . as a general rule I would rather arbitrate than go to war; but not in such a case as this unless the referees should be eminent and impartial civilians selected by ourselves. . . . A government which is capable of so grossly outraging all the rules of interpretation as they have shown themselves to be, in my judgment would not hesitate, if the award were made against them, to declare that they would not abide by the award, on some technical objection or other, and thus throw us back precisely where we were before, still more seriously jeopardizing the relations between the two countries.

39

### CLARENDON TO DALLAS

June 26, 1856.

. . . The treaty therefore does not require existing protection to cease, but only forbids using such protection for certain specified purposes. . . .

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40

MARCY TO DALLAS

June 26, 1856.

It would have been yielding to a delusive expectation and laying the foundation of future difficulties, to rely upon a stipulation for the "neutrality" of a ship canal, as between the United States and Great Britain, if either of them was to be in the military occupation or to have political control, under whatever name or form, of the coast of Nicaragua, on either ocean, or of insular positions [such as the Bay Islands] capable in a military sense of commanding the waters adjacent to Nicaragua. The supposition of the neutrality of the canal in such circumstances would be just as absurd as to imagine that any mere words of a treaty could communicate to Great Britain and the United States equality of relation, political or military, to the Erie Canal in the state of New York or to the Bridgewater Canal in England.

41

PRESIDENT BUCHANAN TO CONGRESS

First Message, Dec. 8, 1857

. . . According to their [the British] construction, the treaty does no more than simply prohibit them from extending their possessions in Central America beyond the present limits. It is not too much to assert that, if in the United States the Treaty had been considered susceptible of such a construction, it never would have been negotiated under the authority of the President, nor would it have received the approbation of the Senate. . . .

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## *Appendix D*

### D

#### FULL POWERS OF THE NEGOCIATORS OF THE CLAYTON-BULWER TREATY

Victoria Reg.

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith &ca &ca &ca. To All and Singular to whom these Presents shall come, Greeting! Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion, between Us and Our Good Friends the United States of America, We have judged it expedient to invest a fit Person with full Power to conduct such discussion on Our Part. Know Ye therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection of Our Right Trusty and Well beloved Councillor Sir Henry Lytton Bulwer, Knight Commander of the Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our said Good Friends, have named, made, constituted, and appointed, as We do by these Presents name, make, constitute, and appoint him Our undoubted Commissioner, Procurator and Plenipotentiary: Giving to him all manner of Power and Authority to treat, adjust, and conclude, with such Minister or Ministers as may be vested with similar Power and Authority on the part of Our said Good Friends, any Treaties, Conventions, or Agreements that may tend to the attainment of the abovementioned end, and to sign for Us in our Name, every thing so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid Work, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if Personally Present:

## *Appendix D*

—Engaging and Promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator, and Plenipotentiary, shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as lies in Our Power. In Witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with our Royal Hand. Given at Our Court at Buckingham Palace, the Sixth day of March, in the Year of Our Lord One Thousand Eight Hundred and Fifty, and in the Thirteenth Year of Our Reign.

(Seal)

2

ZACHARY TAYLOR

PRESIDENT OF THE UNITED STATES OF AMERICA,  
To all to whom these presents shall come, Greeting!

Know Ye, That, for the purpose of confirming between the United States and Her Britannic Majesty perfect harmony and good correspondence, I have invested John M. Clayton, Secretary of State, with full power and authority, and also with general and special command, to meet and confer with Sir Henry Lytton Bulwer, accredited to this Government as Envoy Extraordinary and Minister Plenipotentiary of Her said Majesty, and with him to agree, treat, consult, and negotiate of and concerning, a ship canal between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua and Lakes Nicaragua and Managua, or either of them, and communications either by canal or railway across the Isthmus which connects North and South

## Appendix E

America, and concerning the States of Central America and the Mosquito Coast, and all matters and things connected with those subjects, and to conclude and sign a Convention touching the premises, for my final ratification, with the advice and consent of the Senate of the United States, if such advice and consent be given.

In testimony whereof I have caused the seal of the United States to be hereunto affixed. Given under my hand at the City of Washington, L. S. the sixth day of April, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

Z. Taylor.

By the President:  
John M. Clayton,  
Secretary of State.

## E

### TREATY OF WASHINGTON, 1871

#### PROPOSED ADDITIONAL ARTICLE WITH AMENDMENTS

The parts in italics were to be replaced by the clauses appearing opposite to them in brackets.

#### *Original form*

#### *Amendments*

Whereas the Government of her Britannic Majesty has contended, in the recent correspondence with the Government of the United States, as follows; namely: that such indirect claims as those for the national losses stated in the Case presented on the part of the Government of the United

## Appendix E

States, to the Tribunal of Arbitration at Geneva, to have been sustained in the loss in the transfer of the *American Commercial* marine to the British flag; the enhanced *payments* of insurance; the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion—firstly were not included *in fact* in the Treaty of Washington, and further, and secondly, should not be admitted in principle as growing out of the acts committed by particular vessels alleged to have been enabled to commit depredations upon the shipping of a belligerent, by reason of such a *want* of due diligence in the *performance* of neutral obligations as that which is imputed by the United States to Great Britain, and

Whereas the Government of *Her Britannic Majesty* has also declared that the principle involved in the second of the contentions, hereinbefore set forth, will guide their conduct in the future; and

Whereas the President of the United States, while adhering to his contention that the said claims were included in the Treaty, adopts for the future the principle contained in the

[commercial American]

[payment]

[in]

[want]

[performances of the]

[the United States has contended that the said claims are included in the treaty; and

Whereas both governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations]



## Appendix E

*second of the said contentions, so far as to declare that it will hereafter guide the conduct of the government of the United States, and the two countries are therefore agreed in this respect:*

In consideration thereof, the President of the United States, by and with the advice and consent of the Senate thereof, consents that he will make no claim on the part of the United States, in respect of indirect losses as aforesaid, before the Tribunal of Arbitration at Geneva.<sup>1</sup>

[both governments in their relations with each other; now, therefore,]

[consent]

<sup>1</sup> *For. Rel. of U. S., Geneva Arbitration II, 500.*



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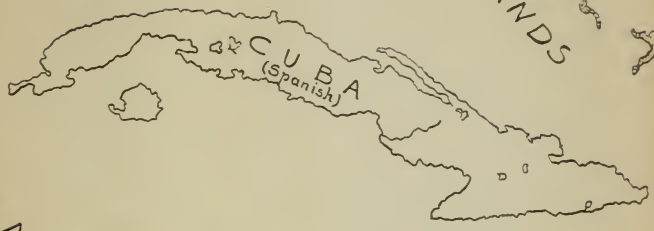
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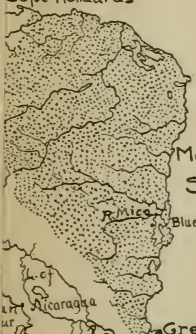
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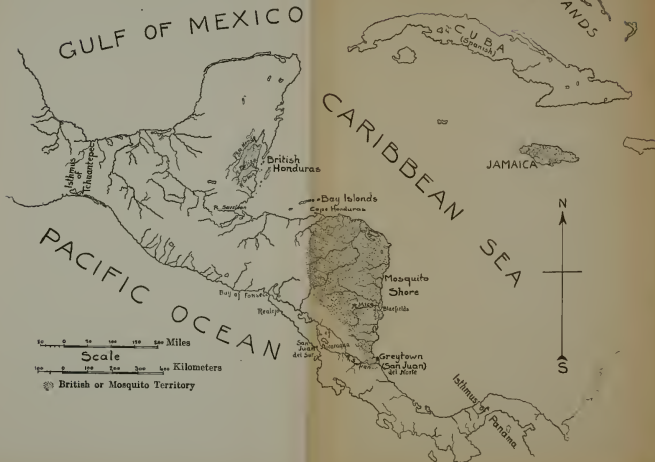
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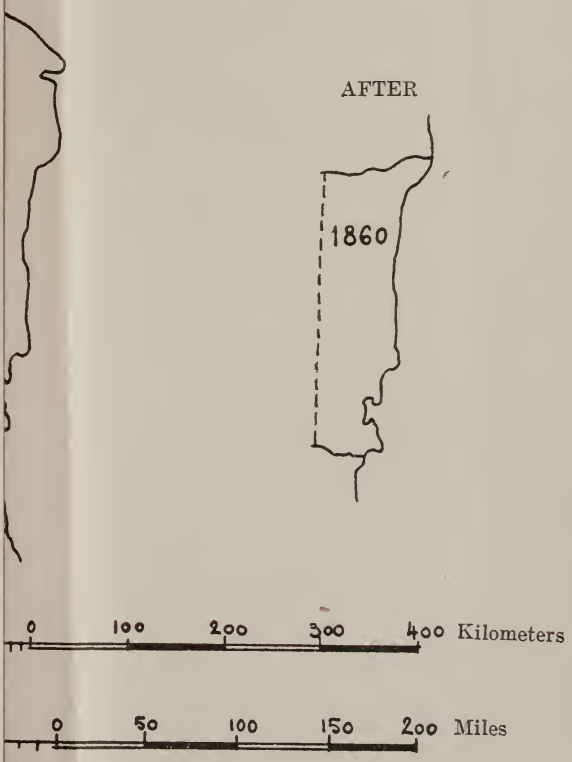
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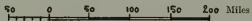
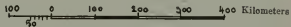
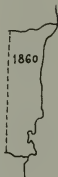
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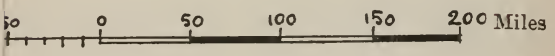
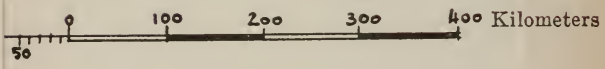
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